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AND PRECEDENTS)

WITH

DISSERTATIONS AND NOTES

TWENTY-SECOND EDITION

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ABBREVIATIONS.

Ad. of E. Act	Administration of Estates Act.
Agr. H. Act	Agricultural Holdings Act.
Alpe	Alpe on the Stamp Acts.
Austen-Cartmell	Austen-Cartmell on the Finance Acts.
Bkcy. Act	Bankruptcy Act.
Blackstone's Comm.	Blackstone's Commentaries.
C. T. Act	Charitable Trusts Act.
Civil P. Act	Civil Procedure Act.
Conv. Act	Conveyancing Act.
Cop. Act	Copyhold Act.
Cust. Act	Customs and Inland Revenue Act.
Dart	Dart on Vendors and Purchasers.
Dymond	Dymond on Death Duties.
Ed. Act	Education Act.
F. & R. Act	Fines and Recoveries Act.
Farwell	Farwell on Powers.
Fin. Act	Finance Act.
Foa	Foa's Landlord and Tenant.
General Conditions of 1925	General Conditions of Sale issued by The Law Society under that title.
Gilb. Ten.	Gilbert's Tenures.
Godefroi	Godefroi's Trusts and Trustees.
Guard. of Inf. Act	Guardianship of Infants Act.
Highmore	Highmore's Stamp Laws.
Inc. T. Act	Income Tax Act.
Interp. Act	Interpretation Act.
Jarm.	Jarman on Wills.
Jud. Act	Judicature Act.
Jud. T. Act	Judicial Trustees Act.
L. C. Act	Land Charges Act.
L. P. Act	Law of Property Act.
L. P. (Amend.) Act	Law of Property (Amendment) Act.
L. Q. R.	Law Quarterly Review.
L. R. Act	Land Registration Act.
L. R. R.	Land Registration Rules.
L. T. Act	Land Transfer Act.
Law of Distress A. Act	Law of Distress Amendment Act.
Lewin	Lewin on Trusts.
Lim. Act	Limitation Act.
Lush	Lush on Husband and Wife.
Mortmain, &c. Act	Mortmain and Charitable Uses Act.
M. W. P. Act	Married Women's Property Act.
P. H. Act	Public Health Act.
P. T.	Public Trustee.

R. P. Lim. Act	Real Property Limitation Act.
R. S. C.	Rules of the Supreme Court.
S. C.	Same Case.
S. D. Act	Succession Duty Act.
S. E. Act	Settled Estates Act.
S. L. Act	Settled Land Act.
S. R. & O.	Statutory Rules and Orders.
Sophian	Sophian on Rent Restriction Acts.
Steph. Comm.	Stephen's Commentaries.
Sug.	Sugden on Vendors and Purchasers.
Theobald	Theobald on Wills.
T. Act	Trustee Act.
Tudor	Tudor's Charitable Trusts.
Vaizey	Vaizey on Settlements.
Vol. Conv. Act	Voluntary Conveyances Act.
Webster-Brown	Webster-Brown on Estate Duty, &c.
Wh. & Tud. L. C.	White and Tudor's Leading Cases in Equity.
Wms. Bkcy.	Williams on Bankruptcy.
Wolst. & Cherry	Wolstenholme and Cherry's Conveyancing Statutes.
Woodfall L. & T.	Woodfall's Landlord and Tenant.

ADDENDA.*

VOLS. I AND II.

References *passim* in Vols. I and II to "Certificates" of Counsel given in connexion with a vesting instrument should be read as relating to "Opinions" of Counsel.

VOLUME I.

Page 36, line 4. For "1926" substitute "1925."

Page 78, line 16. After "795" within the bracket insert "but only if there is a total failure of consideration: *Steinbury* v. *Scala* [1923], 2 Ch. 452."

Page 149, line 30. For "L. R. Act" substitute "L. P. Act."

Page 156, line 11. After "(Middlesex Deeds)" insert "Provisional" and for "1892 and 1913" substitute "1925." Delete Note (*r*) and substitute "(*r*) See (1926), W. N., p. 20."

Page 174, line 10. For "private" substitute "puisne."

Page 178, line 22. Before "office" insert "H.M. Stationery."

Page 181, line 35. For "are" substitute "or."

Page 242, line 3 of note (*f*). For "s. 128 (2) (*c*)" substitute "s. 128 (2) (*d*)."

Page 249, line 4. For "or" substitute "for."

Page 282, note (*e*), line 9. For "1918" substitute "1925."

Page 289, note (*t*), at end. Insert "See also P. Health Act, 1925, s. 35."

Page 454, line 3. Place "First" within the bracket.

Page 460, note (*b*). At end insert "Form 16 applies where the land was vested in representatives on 1st January, 1926, as well as where the death occurred after 1925."

Page 471, line 3 of note (*b*). After "plan" insert "referring to the year and edition."

Page 480, note (*h*), at end. Insert "Probates and letters of administration should be included in the Schedule."

line 13. Leave out "that" and insert "as follows: (a) that" (new line and indent from (a)).

Page 481, line 5. Leave out "(a)" and run on.

Page 492, line 6. Insert "3. *Add Form No.* 8, *p.* 483."

Page 493, note (*n*), line 3. After "certificate" insert "(For form see Vol. II, p. 359)."

Page 498, note (*t*). For "Prec. IX, p. 501" substitute "Prec. XIa, p. 505."

Page 499, note (*x*). Substitute "(*x*) A land charge cannot be registered: L. P. (Amend.) Act, 1926, Sch., amending L. C. Act, 1925, s. 10, Class C (iii)."

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*The addenda do not deal with the matters covered by the General Note, *infra*.

Page 502, line 12. After "&c." insert "(*Reference is made in clause* 2 *to Pt. IX in place of Pt. X, for the whole of Pt. X is not applicable. It would be sufficient instead to refer to s.* 77)."

Page 515. After clause 4 insert "5. *Add Form No.* 8, *p.* 483, *if required.*"

Page 517, line 10. Insert "3. *Add Form No.* 8, *p.* 483, *if required.*"

Page 529. Insert at end of clause 3 "4. *Add Form No.* 8, *p.* 483, *if required.*"

Page 535, line 10. Substitute "455" for "454."

Page 538, note (*j*). After "s. 129" insert "For form of endorsement: Vol. II, p. 359."

Page 539. After clause 3 insert "[4 *and* 5. *Add Forms Nos.* 4 *and* 8, *pp.* 480, 483, *if required*]."

Page 540. Leave out note (*n*) and insert "(*n*) See L. P. (Amend.) Act, 1926, Sch., amending L. P. Act, 1925, s. 89."

Page 543, line 3. Insert "3. *Add Form No.* 8, *p.* 483, *if required.*"

Page 546. After clause 2 insert "3. *Add Forms Nos.* 4 *and* 8, *pp.* 480, 483, *if required.*"

Page 547, note (*b*). At commencement of note insert "This Precedent can be adapted to the ordinary case of vendor joint tenants beneficially entitled, by reciting the joint seisin and implied trust for sale, or an assent to the Vendors, as on p. 560."

Page 551, line 14. Insert "3. *Add Form No.* 8, *p.* 483, *if required.*"

Page 564. At end of clause 2 insert "also *Form No.* 8, *p.* 483, *if required.*"

Page 572. In Recital (2) for "Certificate" insert "Opinion," for "certified" insert "stated"; in recital (3), line 2, for "in" substitute "on."

Pages 593–595. Leave out references to "lunacy" in parties and recitals and refer to orders "made under 53 Vict., c. 5, and amending Acts in the matter of the Vendor" instead of to the Lunacy Acts, save where there has been an inquisition.

Page 617. At end of clause 2 insert "*Probates and letters of administration should be included in acknowledgments. This Precedent will apply, with slight modifications, where the death occurred before* 1926, *see Ad. of E. Act,* 1925, *s.* 39, *which is retrospective.*"

Pages 627–630. Leave out all references to "lunacy" in parties and recitals unless there has been an inquisition and refer to the Orders as made under "53 Vict., c. 5, and amending Acts in the matter of the Vendor."

Page 632, line 7. For "King's Bench" substitute "Chancery."

Page 633, note (*b*). For "1st January, 1884" substitute "15th August, 1921"; for "King's Bench" substitute "Chancery." At end of note insert "The petition is registered as a lis pendens by the officer of the court, the official receiver registers the receiving order as an order affecting land."

Page 635. In recital (3) substitute "Chancery" for "King's Bench."

Page 647, line 2. After "action" insert "to the account aforesaid."

Page 680. At end of note (*c*) insert ": *Eastbourne Corpn.* v. *A.G.* [1904], A. C. 155."

Page 702, line 5. Insert "3. *Add Form No.* 8, *p.* 483, *if required.*"

Page 717. At end of clause 2 insert "*New Form No.* 8, *p.* 483, *if required.*"

Page 760. Leave out clause 4. See L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, s. 39 (4) (i).

Page 866. At foot insert "For form of endorsement: Vol. II, p. 359."

Page 872, note (*d*). At end insert "If the Inland Revenue continue to claim stamp duty in respect of certain compensation agreements reserving rights, then the usual certificate of the amount of the consideration or as to the part attributable to the rights must be added to this and the following precedents."

Page 1021, line 27. After "rentcharge reserved in" insert "reservation, for purposes of, 795, 796."

VOLUME II.

Page xlii. For "*Re* Morris, 65 Sol. J. 95, &c.," read "*Re* Morris, 1922, 1 Ch. 126; 91 L. J. Ch. 188; 126 L. T. 281; 66 Sol. J. 74 (18); 38 Times L. R. 27.

Page 44, line 7. At end insert "p. 14, *supra*."

Page 52, line 23, Leave out "general equitable charges (Class C (iii))."

Page 67, line 27. Leave out this line relating to Form No. 11.

Pages 75 & 76. Leave out Form No. 11 and notes thereto; it is no longer required: L. P. (Amend.) Act, 1926, Sch. amending L. P. Act, 1925, s. 89 (6).

Passim. References to Form No. 11 should be struck out.

Page 81, line 9. At end within the bracket insert "with insurers approved by the Mortgagee[s]."

line 22. After "Borrower" insert "will."

Page 87, line 29. For "or" substitute "as."

Page 93, last line of note (*e*). For "(1920), 65 Sol. J. 95" read [1922], 1 Ch. 126.

Page 109, note (*f*). Leave out "when required" in marginal note.

Page 137, lines 22 & 24. Substitute "E. X." for "E. F." in both cases.

Page 165, line 27. At end insert "*or No.* 7, *p.* 73."

Page 200, lines 28 & 29. Leave out from "or" to "contained" and after "and all" insert "interest and."

Page 229, line 25. Substitute "Fourth Schedule" for "Third Schedule."

Page 263, note (*a*). At end insert "For the stamp: Stamp Act, 1891, s. 88 (1), (2)."

Page 266, line 33. After "*interest*)" insert "the sum of £——."

Page 267, line 16. For "1925" substitute "1926."

Page 328, line 23. For "payee" substitute "payor."

Page 385, line 9. At end insert "ts."

Page 398, lines 14 & 15. For "Transferor" substitute "Lender"; for "Lender" substitute "Transferor."

Page 413, line 5. After "Creditors" insert "with a covenant to convey other property."

line 9 of note (*b*). Insert "See the covenant to convey land in clause 6 of the text."

Page 416. At top substitute "(3)" for "(2)."

Page 495. Transfer the first line of the text to the bottom of the page. (In some later copies, this correction has been made.)

Page 496, line 3. Insert square bracket at end.
After line 3 insert "*or* [The debts and liabilities of the old firm shall be discharged by the new firm and the old firm shall be kept indemnified therefrom]."

Page 506, line 7 of note (*l*). Insert "The Inland Revenue claim that the principle in *Garnett* v. *I. R. C.* (1899), 81 L. T. 633, applies."

Page 515, note (*y*). At end of note insert "The usual statutory declaration must be made by a solicitor."

VOLUME III.

Page 4, line 1. After "property" insert "vested in trustees or in two or more mortgagees."

Page 5, line 32. After "delegate" insert "some of."

Page 8, line 1. After "must" insert ", apart from S. L. Act, 1925, s. 66."

note (*m*). At end insert "As to forestry leases: S. L. Act, 1925, ss. 41 (iii), 48."

Page 11, line 25. At end insert "But where there is a trust for sale death duties may sometimes be payable in a gross sum and not by instalments; *cf.*, Ad. of E. Act, 1925, s. 53 (3)."

Page 34, line 7. After "Court" insert "It is not necessary to proceed by petition though the vesting order is not consequential on an appointment."

Page 35, line 30. Leave out "sub."

Page 36, line 13. For "*Bowles* v. *Baker*," &c., substitute "*Forster* v. *Baker* [1910], 2 K. B. 136."

note (*x*). Leave out "*Re Cliff*" and citation, and insert "now R. S. C. Order 11, r. 1 (*d*) and (*g*), r. 8 (A)."

Page 44, line 2. At end insert "save in the case of insolvent estates: *Re Herbert* [1926], P. 109."

Page 47, note (*s*). At end of note insert "*cf.*, *Darlington* v. *D.* (1926), W. N. 132."

Page 100, line 22. At end insert, "As to the deductions to be made from the value of the property on a resettlement: *Baker* v. *I. R. C.* [1924], A.C. 270."

Page 250, note (*j*). After the reference to *Re Crosse*, insert "but a gift of such an annuity as after deducting income tax will amount to a specified sum does not free the annuitant from super-tax: *Re Bates* [1925], Ch. 157; and see *Davis* v. *I. R. C.* [1923], 1 K. B. 370."

Page 260, note (*i*). In line 2 of the note after "s. 74" insert "As to the value on which the stamp is otherwise based: *Baker* v. *I. R. C.* [1924], A.C. 270."

Page 303, line 6, of note (*w*). For "1926" substitute "1925."

Page 413, note (*o*). For "1924" substitute "1925."

Page 430, line 10, of note (*a*). After "1st Sch." insert "Pt. III."

Page 449, line 2, of note (*i*). For "1st Sch." substitute "3rd Sch."

Page 503, line 11, of note (*i*). For "7th Sch." substitute "5th Sch."

Page 532, line 9. At end insert "showing that the liability may be confined to the trust estate."

Page 571, line 3 of note (*j*). For "576" substitute "676."

Page 630, note (*dd*). For "Continuance Act, 1926" substitute "Act, 1925."

Page 950, note (*u*). At end insert "; *Collins* v. *Hopkins* [1923], 2 K. B. 617."

Page 995, line 32. Insert at end "A welfare levy of 1*s.* in the £ is payable by a person liable for mineral rights duty: Mining Industry Act, 1926, s. 14.

Page 1117, note (*u*). At end insert, "As to deducting the welfare levy from the royalties reserved: Mining Industry Act, 1926, s. 14."

GENERAL NOTE.

The L. P. (Amend.) Act, 1926, passed after the publication of Volumes I and II, materially affects so many passages in those volumes that it is impracticable to deal with these changes in the Addenda.

To meet this situation, the following summary of the general effect of the Act is given.

L. P. (Amend.) Act, 1926 (summary).

S. L. Act, 1925, ss. 13 and 20 (1) (ix). Estate owners subject to family charges.

Under s. 13 of the S. L. Act, a tenant for life was unable, as respects settled land, to convey or create a legal estate until a vesting instrument was executed. A "tenant for life" includes an absolute owner entitled subject to a family charge, etc.: *ib.*, s. 20 (1) (ix). It should be noted that s. 13 only applies to "settled land"; hence if a tenant can terminate the settlement, *e.g.*, by surrendering (see p. 869, *infra*) his life interest, a vesting instrument becomes unnecessary.

Now under s. 1 (1) of the Amending Act an absolute owner can convey his legal estate subject to a family charge, etc., as if the land had not been settled land. In such a case a vesting instrument *can* be dispensed with, if he contracts to deal with the legal estate subject to the charge.

A similar power is given to the "estate owner for the time being" by sub-s. (2) where the power conferred by sub-s. (1) or the limited power for a like purpose conferred on a tenant for life by S. L. Act, 1925, s. 16, has been exercised, or where before 1926 land has been conveyed to a purchaser for money's worth, subject to a family charge, etc., notwithstanding the S. L. Act, 1925, and where necessary by ruling out the instrument creating the charge, etc., as an instrument or one of the instruments creating a settlement. Thus, if a subsequent settlement is made, the estate owner thereunder (notwithstanding S. L. Act, 1925, s. 1 (1), proviso, relating to compound settlements) can make a title subject to the charge in question, without treating the instrument creating it as one of the instruments constituting the settlement. Similarly, absolute owners, mortgagees, personal representatives and trustees for sale, being estate owners, *can* make a title subject to the charge in these special cases, as if the land was not settled.

The section does not prejudice the *power* to overreach the charge, whether conferred by the S. L. Act, 1925, or by virtue of a trust for sale or otherwise, nor is it intended to encourage the making of second-class titles. The object is to prevent an injustice being done to persons who have acquired these indifferent titles in the past and to authorise an absolute owner to raise money for his own benefit, subject to a family charge.

If the owner whose legal estate is affected by the charge dies testate, the S. L. Act trustees, if they do not renounce, can prove his will in regard to the "settled land": Ad. of E. Act, 1925, s. 22. But, whoever are the representatives, will have the option of making title either way. To deprive the estate owner of his option (*e.g.*, by taking the case for all purposes out of the S. L. Act) is unnecessary and contrary to principle; he can always determine the settlement by creating an overreaching trust for sale. It would be unjustifiable to place an absolute owner in a worse position than a tenant in tail in possession, in regard to overreaching family charges.

The section is retrospective: s. 8 (2).

L. P. Act, 1925, s. 140 (2). Counter notices by agricultural tenants.

Section 2 of the Amending Act is explained in the last Chapter of this volume, and no further reference thereto is needed here. The section is retrospective: s. 8 (2).

Extended meaning of "trust corporation."

Section 3 extends the meaning of "trust corporation" to include:—

(*a*) The Treasury Solicitor and Official Solicitor.

(*b*) Any person holding any other official position prescribed by the Lord Chancellor.

(*c*) A trustee in bankruptcy and a trustee under a deed of arrangement with creditors.

(*d*) In relation to charitable, etc., trusts, when so prescribed or authorised to act by the Lord Chancellor:—

- (i) local and public authorities;
- (ii) corporations, acting without remuneration or not for profit.

The object is to authorise these bodies to accept trusts and give valid receipts though they could not properly be authorised to act as custodian trustees, see L. P. Act, 1925, s. 205 (1) (xxviii).

The section is restrospective: s. 8 (2).

Registration under L. C. Act, priority

The object of s. 4 of the Amending Act, with the rules thereunder, is first to secure that registrations shall take effect in their proper order, and, secondly, to give a purchaser two days from the date of an official certificate of search within which he can complete in safety. Incidentally such certificates become essential documents of title, they will only be issued after the office is closed for registration, hence will include entries (including priority notices) made on the date of the certificate.

notices and certificates.

This object is secured by authorising an intended applicant to lodge a priority notice at least two days before the registration is to take effect. Then, if the application is presented within fourteen days and refers to the notice, the registration will take effect as if made when the charge or transaction is effected. Contemporaneous transactions will take effect, for registration purposes, in the proper order.

A purchaser, completing before the end of the second day, is not affected by entries made after the certificate, unless made pursuant to a priority notice registered before the certificate.

The section is not retrospective; the Act was passed on 16th June, 1926.

L. R. Act, 1925, s. 30.

Further advances pursuant to an obligation.

Section 5 of the Amending Act brings the law relating to further advances made pursuant to an obligation affecting registered land into line with L. P. Act, 1925, s. 94 (1) (*c*). The section is not retrospective.

S. L. Act, 1925, s. 13.

Improvement charges, orders absolute.

Section 6 appears to be a pious declaration of the existing law, for s. 13 of the S. L. Act, 1925, only applies to dispositions by a tenant for life or statutory owner. Presumably it was thought that, as orders vesting or creating a legal estate operate as if made by the estate owner (L. P. Act, 1925, s. 9), any doubt on this score ought to be removed.

Scheduled Amendments.

Operation of scheduled amendments.

The scheduled amendments are retrospective: s. 8 (2), but have effect without prejudice to any title acquired by a purchaser, or any registration effected before 16th June, 1926: s. 7.

Amendments of L. P. Act, 1922.

Sales of glebe land in consideration of a rentcharge.

Section 43 is left in force in regard to glebe land (S. L. Act, 1925, 5th Sch.), the amendment corrects a verbal error, it brings the section into line with S. L. Act, 1925, s. 39 (2).

Customs to demise without licence from the lord.

The amendment of para. 13 of Pt. II of the 13th Sch. confirms the construction placed on this paragraph in 1 Wolst. & Cherry, 11th ed., 81, 82.

Amendments of S. L. Act, 1925.

Trust for sale terminates a settlement.

If land becomes subject to an immediate binding trust for sale, whether or not there is power to postpone, the "settlement" can no longer subsist and the land ceases to be "settled land," see amendments of ss. 1 and 3, also amendment of L. P. Act, 1925, s. 2, and note thereto, *infra.*

Protection of purchaser without notice of operation of a cesser or shifting clause.

The object of the amendment of s. 13 is to protect a purchaser without notice that a cesser (name and arms) clause or a shifting clause had taken effect or that the life interest had been surrendered, see also s. 110 (2) (*a*). He might have had notice that there was a settlement, but he would not thereby know that there had been a change in the beneficial ownership.

S. L. Act trustees of compound settlements.

Under s. 31 the S. L. Act trustees of a prior instrument become the trustees of the instruments which are subsequent in date or operation. The amendment carries the matter further, for in default of trustees of a prior instrument, persons who are trustees of the instrument under which there is a tenant for life or statutory owner (whether by virtue of s. 31 or otherwise) will become the trustees of the compound settlement, until other trustees are appointed. This leaves it open for persons interested in prior family charges, if dissatisfied with the trustees, to apply to the Court under s. 34.

Re-entry on non-payment of a rentcharge.

The amendment of s. 39 brings L. P. Act, 1925, s. 121 or 122, into play. To insert a condition for re-entry on non-payment after 30 days was contrary to the practice.

Trust to hold capital money to devolve with settled land without a trust to invest in land.

Section 78 removes (see *Re Walker* [1908], 2 Ch. 705) the need for a trust to invest in the purchase of land in order that the money should devolve as land. The Act applies to settlements made before 1926: s. 119 (1) (*a*); it was not intended to affect the beneficial interests of a purchaser (see s. 118) acquired before 1926; this point is cleared up by the amendment.

Surrender of life interest to next remainder-man.

The words in s. 105 (1), which are repealed, were a legacy from a Bill prepared on different lines. The surrender might, *e.g.*, be made to trustees for sale as the persons next entitled, they would not have the powers of a tenant for life under the S. L. Act, but under the L. P. Act, 1925, s. 28 (as amended).

Protection of mortgagees of a portions term.

Though under S. L. Act, 1925, 2nd Sch., para. 1 (6), on the execution of the vesting deed, legal portion terms are converted into equitable terms, it was not intended that the sub-term of a mortgagee (L. P. Act, 1925, 1st Sch., Pt. VIII, para. 1) derived out of the portions term should be converted into an equitable interest. This is made clear by the amendment.

Amendments of L. P. Act, 1925.

All immediate trusts for sale may be made "overreaching."

Law of Property Act, 1925 s. 2 (2), as amended, reads as follows :—

"(2) Where the legal estate affected is subject to a trust for sale, then, if at the date of a conveyance made after the commencement of this Act under the trust for sale or the powers conferred on the trustees for sale, the trustees (whether original or substituted) are either—

(*a*) two or more individuals approved or appointed by the Court or the successors in office of the individuals so approved or appointed ; or

(*b*) a trust corporation,

any equitable interest or power having priority to the trust for sale shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale."

Thus all immediate trusts for sale may become "overreaching" within the requirements laid down in *Re Leighs S. E.* (1926), W. N. 191 ; 70 Sol. J. 758, and see Articles : 70 Sol. J. 749, 769. Where there is a prior charge, the sub-section merely requires the *subsequent* approval of the trustees or the appointment of a trust corporation to act as trustee ; it is immaterial how the trust for sale itself was originally created.

It is not necessary, even where there is a prior charge, to comply with this requirement in all cases : see S. L. Act, 1925, s. 36 (2) ; L. P. Act, 1925, 1st Sch., Pt. IV., para. 1 (3), as amended, see *infra*.

"Binding."

Not all equitable interests are overreachable : L. P. Act, 1925, s. 2 (3). It is unnecessary to construe "binding" as meaning "overreaching" for the general purposes of the Acts, indeed it would make havoc of many provisions were such a restricted meaning placed on "trust for sale" ; a more natural meaning would be "effectual" or "irrevocable," see *Re Goodall* [1909], 1 Ch. 440. This construction is warranted by Ad. of E. Act, 1925, where the same definition (s. 55 (1) (xxvii)) is given of a "trust for sale," for in s. 39 (1) (ii) an "effective trust for sale" is obviously not considered as applying merely to an overreaching trust.

The effect of the amendment, as respects S. L. Act, 1925, s. 20 (1) (viii), taken with the amendments of ss. 1 and 3, *supra*, is to rule out the words " or until sale of the land " which, for practical purposes, become obsolete.

Fee simple subject to a right of entry.

The object of the amendment of s. 7 (1) is to secure that a fee simple in land affected by a rentcharge to which a right of entry (L. P. Act, 1925, s. 121) is annexed, shall nevertheless (*ib.*, s. 1 (1) (*a*), 1st Sch., Pt. I) be treated as a " legal estate."

There can be only one legal right of entry affecting a fee simple, namely, a right annexed to a legal rentcharge: *ib.*, s. 1 (2) (*c*). When an equitable right of entry, giving an absolute right to the land, takes effect, the estate owner of the land must make the conveyance required to give legal effect to it: *ib.*, s. 3 (3).

Right of beneficiaries to be consulted.

Section 26 (3) as re-enacted only confers an equitable right to be consulted on the persons entitled to the income of land until sale, where the trust for sale is statutory.

Receipts by trustees for sale.

Section 27 (2) was re-enacted to remove the doubt whether, as respects trustees for sale, the restriction in regard to receipts of capital, applied to statutory trusts for sale, as well as those created by a " disposition."

Additional powers of trustees for sale.

Section 28 gives the S. L. Act powers to trustees for sale; under the amendment the additional powers conferred by a " settlement " become exercisable by the former S. L. Act trustees when they become (S. L. Act, 1925, s. 36; L. P. Act, 1925, 1st Sch., Pt. IV., para. 1 (3)) trustees for sale.

Statutory trusts of the proceeds of sale.

The amendment of s. 35 makes it clear that where an undivided share was formerly " settled land " and the settlement remains on foot in regard to other property, the best method of " giving effect to the rights of the persons interested in the land " is to pay the proper proportion of the proceeds to the S. L. Act trustees.

Semble, the same principle might be properly applied if an undivided share had been subject to a separate trust for sale.

Beneficial owners holding on trust for sale.

The words added to s. 36 (2) are merely declaratory. There is nothing in the Act to prevent a sole beneficiary from dealing with his land in any manner recognised by the general law. It is true that under s. 23, for the *protection* of a purchaser a trust for sale continues " until the land has been conveyed to or *under the direction* of the persons interested in the proceeds of sale," but this recognises the right of a beneficiary to give directions. When a trustee also becomes sole beneficiary his dominion is complete.

Sales in lots by mortgagees at apportioned rents.

The amendment of s. 89 (6) renders unnecessary Form No. 11 in Vol. II, p. 75. Provided that the rent reserved by the lease is equitably apportioned for the purposes of the sale, the mortgagee can, under the statutory power, make a title to separate parts of the land comprised in the lease. As to the power for a mortgagee to apportion rents: *ib.*, s. 190 (5).

Mortgages for securing future advances.

The words substituted in s. 94 (2) show that the mortgagee may rely on a search made at the time when the original mortgage was created, though the actual advance is made at a subsequent date.

Handing over deeds by a mortgagee.

The object of the amendment of s. 96 (2) is to enable a mortgagee, when paid off, to hand over the deeds without making a search: see *ib.*, ss. 197, 198.

Purchaser's right to power of attorney, or a copy.

A purchaser, if he does not obtain the original power of attorney, will, under s. 125 (2) as amended, be entitled to a plain copy of the material parts, which he can, by applying to the Central Office, convert into an office copy.

Secret trust, protection of a purchaser.

A purchaser, without notice of a secret trust, will, if he deals with the trustee or mortgagees deriving title under the trustee (who produce the title deeds), get a good title though the legal estate may have been transferred to the beneficiaries by the vesting provisions: 1st Sch., Pt. II, as amended.

The Act does not transfer a legal estate held in trust for persons in undivided shares or as joint tenants: *ib.*, s. 36, 1st Sch., Pt. II, para. 3; also Pt. IV, para. 1 (1). In such cases the trustee becomes a trustee for sale; he can convey the legal estate to a purchaser. If the latter has no notice of the trust, the beneficiaries will not be able to sustain an objection that the receipt by a sole trustee for the purchase money is invalid: *ib.*, s. 27 (2), as amended, for they were responsible for putting the trustee in a position to make title as if he were an absolute owner. The proper course, however, is to appoint an additional trustee, see pp. 479–83, *infra.*

Power to disclaim onerous term.

Where a right of redemption has been barred before 1926 and the former mortgagee only has a mortgage term vested in him, he or his representative can disclaim the term out of which the mortgage was created, before proceedings are commenced and before dealing with the head term, though it would otherwise be transferred to him by the vesting provisions: 1st Sch., Pt. II, para. 7 (*m*).

Over-reaching powers of trustees for sale.

The amendment of 1st Sch., Pt. IV, para. 1 (3), brings this sub-paragraph into line with s. 36 (2) of the S. L. Act, 1925, so that the persons who, on 31st December, 1925, were the S. L. Act trustees, become trustees for sale with power to overreach the limitations of the former "settlement."

Vesting on an appointment in place of the Public Trustee.

Where persons entitled to undivided shares in the proceeds appoint trustees in place of the Public Trustee, no vesting declaration (express or implied) is required, for the legal estate will vest by virtue of the Act: 1st Sch., Pt. IV, para. 1 (4) (iii), amendment.

In the case of enfranchised land, fines and fees would have become payable had the legal estate passed by the appointment instead of by the Act.

Partition actions.

An order for partition or sale must be obtained within eighteen months from 1st January, 1926, to prevent the land vesting in trustees for sale: 1st Sch., Pt. IV, para. 1 (10). There are many writs on record which have not been proceeded with.

Persons entitled to apply for stay of proceedings.

" One-half or upwards ": *ib.*, para. 1 (11); this is in accordance with the original Bill and with the principle formerly adopted in the Partition Acts.

Legal rentcharges paramount to trust for sale.

" Legal rentcharges affecting the entirety " are placed on the same footing as tithe rentcharges: *ib.*, para. 1 (12); they remain paramount to the trust for sale as do legal mortgages: *ib.*, para. 1 (8).

Severance during lives only.

Where the severance only applies during the lives of the tenants for life, the entirety being otherwise settled to devolve together, a trust for sale becomes unnecessary: Pt. IV, para. 4 (new paragraph).

Where a settlement is made after 1925 the life interests should not be severed by the trust instrument unless a trust for sale is employed, but the tenants for life can make their own arrangements as to sharing the income.

Amendments of T. Act, 1925.

Trustees power to give receipts.

The amendment of s. 14 (2) (*a*) is to meet the point that the restriction did not apply where the trust for sale was created by statute.

Filing of powers of attorney.

A power of attorney executed outside the United Kingdom may be filed within ten days after its receipt here: s. 25 (4), amendment.

Liability for rents and covenants.

The amendment of s. 26 (1) corrects a clerical error and restores the original enactment.

Advertisements for claims.

An advertisement in a daily London newspaper is no longer essential if inserted in a newspaper circulating in the district in which the land is situated: s. 27 (1), amendment.

Amendments of L. C. Act, 1925.

Charge by way of indemnity.

The amendment of s. 10, Class C (iii), removes a doubt. For the class of charge which need not be registered, see L. P. Act, 1925, s. 77 (7).

Registration in Yorkshire.

The object of s. 10 (6), as amended, is to secure that the items in question shall be registered locally instead of at the Land Registry; formerly it was optional. The registrations effected in London will be sent to Yorkshire. This does not free a purchaser of Yorkshire land from the consequences which may arise if, in regard to other items, he does not obtain a certificate of search in London.

Local land charges.

The amendments of s. 15 were made to remove certain doubts which occurred in practice.

Amendment of Univ. & Coll. Estate Act, 1925.

Sales in consideration of a rentcharge.

The amendment of s. 3 corresponds with the amendment of S. L. Act, 1925, s. 39, *supra.*

AUTHORITIES ON THE ACTS.

The following cases, affecting the new Acts, have been reported or decided since Vol. I was published :—

L. P. Act, 1925, s. 28 (2). *Howe* v. *Dartmouth* (tenant for life and remainderman.)

The principle in *Howe* v. *Earl of Dartmouth* (1802), 7 Ves. 137a, no longer applies where leaseholds are held on trust for sale, with power to postpone, within L. P. Act, 1925, s. 28 (2) : *Re Brooker* (1926), W. N. 93 ; 70 Sol. J. 526. It never applied to a settlement by deed : *Re Van Straubenzee* [1901], 2 Ch. 779 ; *cf.*, s. 32 (1). See also Ad. of E. Act, 1925, s. 33 (5) (intestacy, trust for sale).

L. P. Act, 1925, ss. 28 (2), 31 (2) (5) ; S. L. Act, 1925, ss. 83, 84, 102 (2) (*b*), (3), 3rd Sch. (Repairs payable out of income.)

Trustees for sale have the powers given by S. L. Act, 1925, s. 102, though the persons interested in the income until sale are not infants. Repairs (*semble* not being "improvements" within S. L. Act, 3rd Sch., payable out of capital), though relating to matters of a substantial or permanent nature, are payable out of income. The principle in *Re Hotchkys* (1886), 32 Ch. D. 408, 418, 420, is no longer applicable : *Re Gray* (1926), W. N. 279 ; 70 Sol. J. 1112.

L. P. Act, 1925, s. 28 (4). (Order in favour of tenant for life of proceeds.)

An order made before 1926 under S. L. Act, 1884, s. 7, giving certain powers to a tenant for life of the proceeds of sale remains "in force" and he can exercise the powers conferred in the names of the trustees for sale : *Re Lady Francis Cecil* (1926), W. N. 138.

L. P. Act, 1925, s. 84 (9). (Restrictive covenants.)

The Court, where it has no jurisdiction to give modified relief, will stay proceedings to restrain a breach of a restrictive covenant, to enable an application to be made to the authority : *Feilden* v. *Byrne* [1926], 1 Ch. 620.

L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (11) (i) and (iv). (Trustees for sale represent a share.)

At any rate for the purposes of Pt. IV., para. 1 (11), trustees for sale of an undivided share may be treated as sufficiently representing such share, apart from the persons beneficially interested : *Darlington* v. *D.* (1926), W. N. 192 ; 70 Sol. J. 775, also Art. *ib.*, 769–70.

S. L. Act, 1925, s. 1 (1) (v). (Family charge does not include an ecclesiastical rentcharge.)

A yearly pension to an incumbent, a charge for the repair of a chancel of a church, and a procuration or synodal payable to a bishop or archdeacon is not a family charge within S. L. Act, 1925, s. 1 (1) (*v*) : *Re Braby and Newman's Contracts*, 17th June, 1926, *Reg. Lib.*, 1926, B. 1009 (Ch. D.) ; but an annuity, given by will, which, under a power of appropriation, is charged on land, is a family charge and creates a settlement: *Re Bird* (1926), W. N. 296; 162 L. T. Jour. 341.

S. L. Act, 1925 s. 67. (Sale of heirlooms.)

Order made subject to bringing a scheme into Chambers for effecting the sale and to the payment of the purchase money to the trustees for investment: *Re Lord Bateman's Settled Heirlooms*, Times Newsp., 11th June, 1926; 70 Sol. J. 810.

S. L. Act, 1925, ss. 1 (1), 19 (1), 20 (1) (v) and (ix), 93. (Who are tenants for life. Effect of assignment of life interest and of conveyance of fee simple respectively.)

A "person of full age" may include a "company" for the purposes of the S. L. Act: *Re Earl of Carnarvon's S. E.* (1926), W. N. 242; and see 70 Sol. J., 901-2.

A contract for or assignment on sale of a life interest leaves the powers with the former tenant for life, though the purchaser may be a "tenant for the life of another" within s. 20: *ib.* (*Re Chesterfield Estates*).

But such a contract or assignment, made before 1926, of the fee simple subject to a family charge brings the purchaser within s. 20 (1) (ix); accordingly the purchaser has the powers of a tenant for life: *ib.* (*Re Highclere Estates*).

S. L. Act, 1925, s. 24. (Trustees to act in name of tenant for life.)

Where an application is made for leave for the S. L. Act trustees to exercise the powers, the tenant for life should either be made a party or his written consent should be strictly proved: *Re Cecil's S. E.* (1926), W. N. 262.

S. L. Act, 1925, 2nd Sch., para 1. (Number of vesting instruments; capital money.)

Where convenient two or more vesting deeds may be executed for giving effect to a settlement, referring to different parcels: *Re Clayton's S. E.* [1926], Ch. 279; 95 L. J. Ch. 169.

No vesting instrument is required in relation to capital money: *ib.*

S. L. Act, 1925, ss. 1 (1), 22 (2), 108 (2), 109. (Additional powers; trustees' rights to capital money and investments.)

Additional powers conferred by all and each of the instruments creating a compound settlement are exercisable by a tenant for life, though, if wrongly exercised, they might affect prejudicially family charges originally paramount to the instrument under which the tenant for life takes his interest, for a wrongful exercise can be restrained: *Re Cowley S. E.* [1926], Ch. 725. Any other decision would, in certain cases, have rendered almost insuperable the task of preparing a vesting instrument without mentioning equitable interests. In restraining the exercise of such a power, it is conceived that the Court would draw a clear distinction between the exercise of a power for carrying out a transaction for the benefit of the settled estates as a whole, even though its exercise might indirectly affect a family charge, and one which primarily affected the beneficial interests in question.

Additional powers, relating to the investment of capital, may be made exercisable by a tenant for life subject to the consent of a third party being obtained: *ib.*, *cf.* *Lonsdale* v. *Lowther* [1900], 2 Ch., at pp. 696–97.

All capital money arising after 1925 must be paid to the trustees of the compound settlement, but investments representing capital money, not affected by a subsisting family charge, will not be transferred to such trustees: *Re Cowley*, *supra.* But capital money may be subsequently made subject to a family charge: p. 376, *infra.*

S. L. Act, 1925, ss. 1 (1), 3, 13, 22 (2), 31 (1); 1st Sch. Form No. 1; 2nd Sch., para. 1 (1), (2) (3). (Compound settlement; restoration of life interest.)

A compound settlement, speaking broadly, consists of the documents for the time being creating it; *semble* it is a separate entity. Independently of the L. P. (Amend.) Act, 1926 (amending s. 31), there must be S. L. Act trustees of the first instrument (unless trustees of the compound settlement have been appointed by the Court) to execute a vesting instrument for giving effect to the settlement: *Re Cradock's S. E.* [1926], 95 L. J. Ch. 364; W. N. 179. See also as to the meaning of a compound settlement: *Re Ogle's S. E.*, *infra.*

Where a life interest is restored, though the tenant for life takes under the prior instrument, he has the additional powers (if any) conferred by the resettlement: *Re Cradock*, *supra.*

S. L. Act, 1925, ss. 23, 24, 104; L. P. Act, 1925, s. 155. (Release of statutory powers by statutory owner having no interest and not being a trustee of the settlement.)

A statutory owner (not being a trustee of the settlement), having no beneficial interest, is not within S. L. Act, 1925, s. 24, hence cannot consent to an order authorising the trustees to exercise the powers in his name: *Re Craven S. E.* (1926), W. N. 257; 70 Sol. J. 1111. But he can release his statutory powers under L. P. Act, 1925, s. 155, with the result that the trustees become statutory owners: S. L. Act, 1925, s. 23, though a tenant for life (*ib.*, s. 104) cannot release his powers: S. C.

S. L. Act, 1925, ss. 1 (1) (iii), 23, 117 (1) (ix). (Class gift in shares; contingency; statutory owners.)

A trust for a class of persons who attain twenty-one, in equal shares, whereof only one member has attained the requisite age, there being others capable of taking, does not create a trust for sale until the land becomes divisible in shares; in the meantime the S. L. Act trustees, there being no tenant for life of the entirety, are the statutory owners: *Re Bird* (1926), W. N. 296; 162 L. T. Jour. 341. In default of express appointment, the executors would have been S. L. Act trustees: s. 30.

S. L. Act, 1925, ss. 16 (1) (iii), 18, 2nd Sch., para. 1. (Mortgages by tenant for life having a general power of appointment.)

A tenant for life in whose favour a vesting deed has been executed pursuant to S. L. Act, 1925, 2nd Sch., para. 1, having a general equitable power to appoint subject to rentcharges for lives, may, notwithstanding s. 18, under s. 16 (1) (iii), execute a legal mortgage for raising money for his own benefit, subject to the rentcharges: *Re Egerton's S. E.* [1926], Ch. 574.

Under s. 16 (3) his power to raise money by virtue of s. 71 (the money being paid in the first instance to the S. L. Act trustees) in priority to the rentchargees would have been available had they consented to postpone their charges to an equitable charge created under the power of appointment: see also s. 16 (2), and L. P. (Amend.) Act, 1926, s. 1.

S. L. Act, 1925, ss. 20, 23 and 117. (Trust to pay a share of rents and accumulate the balance.)

Though a person who would have been entitled to the income, save for a trust to accumulate the whole or a part, is a tenant for life: ss. 20 (1) (viii), 117 (1) (xix), yet if the trust is to pay a share of the income or an annuity to a person, and to accumulate the balance there is no tenant for life, and the statutory owners have the powers under s. 23: *Re Frewen* [1926], Ch. 580; 95 L. J. Ch. 297.

S. L. Act, 1925, ss. 1, 3, 20 (1) (viii); L. P. Act, 1925, s. 2 (2), as amended. ("Immediate binding trusts for sale.")

All immediate trusts for sale are now capable of being "binding" or overreaching trusts for sale within *Re Leigh's S.E.* (1926), W. N. 191; 70 Sol. J. 758; for under L. P. Act, 1925, s. 2 (2), as amended, every trust for sale is "overreaching," subject, in some cases only, to the subsequent appointment of a trust corporation or the approval by the Court of the trustees.

For cases where a trust for sale is "overreaching," though a trust corporation is not acting and the trustees have not been approved: S. L. Act, 1925, s. 36 (2); L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3), as amended by L. P. (Amend.) Act, 1926, Sch.

By reason of the amendments of S. L. Act, 1925, ss. 1 and 3, under which, if land becomes subject to an immediate trust for sale, it ceases to be settled, and of the extension of the meaning of "immediate binding trust for sale" by the amendment of L. P. Act, 1925, s. 2 (2), the words "or until sale of the land" in S. L. Act, 1925, s. 20 (1) (viii), have become practically obsolete. The word "binding" shows that the trust must not be capable of being "revoked" as in *Re Goodall* [1909], 1 Ch. 440, it is sufficient if it is effectual, though in *Leigh's Case* (a special case) it was held to mean "overreaching." And see 70 Sol. J. 749, 769.

S. L. Act, 1925, ss. 20 (1) (viii), 117, 118. (Resulting trusts arising from a gap in the limitations.)

An "implied or constructive trust" includes a resulting trust; the decision in *Re Baroness Llanover* [1907], 1 Ch. 635, 650, is overruled by s. 20 (1) (viii), but by reason of intermediate transactions, which must be regarded: s. 118, there was no tenant for life, hence the S. L. Act trustees of the will (s. 23) became the statutory owners: *Re Llanover S. E.* [1926], Ch. 626.

There is not the same inducement to strain the meaning of s. 20 where, if that section does not apply, there will be statutory owners within s. 23.

S. L. Act, 1925, ss. 1 (1), 20 (1) (ix), 31. (Each fee simple owner subject to a family charge must be treated as entitled under a separate settlement, though the charge also affects other land.)

Trustees can be appointed for the purposes of the Act of land remaining vested in an owner in fee simple, taking under a settlement, subject to family charges, without thereby constituting them trustees of settlements arising by reason of pre-1926 Conveyances on Sale, made subject to but indemnified against family charges. Each fee simple owner of land subject to the charges should be treated, as respects his land, as entitled under a separate settlement, thus one document may create or form part of more than one settlement: *Re Ogle's S. E.* (1926), W. N. 227; 70 Sol. J. 953.

Jud. Act, 1925, s. 155 (1); Ad. of E. Act, 1925, ss. 1 (1), 3 (1) (ii). (Separate administration of trust estate granted to remainderman.)

Where a tenant for life dies intestate, entitled only as trustee to a fee simple vested in him under L. P. Act, 1925, 1st Sch., Pt. II, paras. 5, 6 (*c*), no S. L. Act trustees having been appointed, and leaving a remainderman entitled in fee simple, administration will be granted to the remainderman limited to the trust estate: *Re Dalley* (1926), 70 Sol J. 839.

Jud. Act, 1925, ss. 160, 162. (Administration granted to a creditor notwithstanding a minority.)

In the case of an insolvent estate, the beneficiaries, including an infant, having disclaimed, full administration will be granted to a creditor notwithstanding the minority: *Re Herbert* [1926], P. 109. Though the deceased was insolvent, representation may be severed in regard to a trust estate: Jud. Act, 1925, s. 155 proviso.

CHAPTER I.

THE NEW LAW AS TO TRUSTEES.

SECT. I.—*The nature of a trust and the different kinds of trusts.*

Definition of a trust.

A TRUST may be defined as an obligation attached to the ownership of real or personal property or of some interest in, or power over, real or personal property binding the person in whom such property, interest, or power is vested to hold or exercise it for the benefit of some other person or persons (including or excluding, where there are two or more persons, the person in whom the interest or power is vested, as the case may be), and which obligation is enforceable by means of the equitable jurisdiction of the court.

Bare trust.

A trust may be a bare trust, or an active trust. A *bare* trust is where the instrument imposes on the trustee no duty beyond that implied by law from the bare relation of trustee and beneficiary, *e.g.*, where land is vested in A. in trust for B., the simple duty of A. being to convey the land to B., or according to his direction, whenever required so to do, and in the meantime to permit him to receive the rents and profits.(*a*)

Secret trusts.

Some difficulties have been experienced in consequence of a practice, never expedient, of vesting the legal estate in land belonging to the true purchaser, in a bare nominee, without declaring a trust for sale and having a separate document, which does not come on the title, showing how the net proceeds and the rents and profits until sale are to be held. There can be no justification, after 1925, for not employing a trust for sale in view of the wide powers conferred on trustees for sale by L. P. Act, 1925, s. 28. There should be at least two trustees unless a trust corporation is acting.

Bare nominees.

Protection of purchaser without notice.

The difficulties arose by reason of the vesting provisions in the 1st Sch. to that Act. To some extent these have been removed by the amendment of Pt. II of that Sch. contained in L. P. (Amend.) Act, 1926, Sch., but only where the purchaser does

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(*a*) The meaning of a "bare trustee" and the authorities on the subject will be found in Vol. I, pp. 268–69.

not have notice of the trust (*b*) and the deeds are produced by the nominee or the persons deriving title under him, *e.g.*, his mortgagees.

Active trust.

An *active* trust is where the instrument imposes on the trustee some special duty beyond the simple obligation above referred to, *e.g.*, a trust to sell, or to manage, or to receive the rents and apply them in a particular manner.

How an active trust may become a bare trust.

A trust originally active may become a bare trust, either by reason of all the special duties having been performed, or by reason of the obligation to perform such duties having been put an end to by the act of all the persons beneficially interested in their performance, which act is usually called an election. Thus, if personal estate is given to a trustee in trust to apply the income during the minority of A. for his maintenance, and on his attaining twenty-one in trust for A. absolutely, the trust becomes a bare trust so soon as A. attains twenty-one. Again, if land is vested in a trustee upon trust to sell and divide the proceeds between a number of persons, all of whom, being *sui juris*, join in requesting him not to sell but to convey the land to not more than four of them on trust for sale (L. P. Act, 1925, s. 3 (1) (b) (ii) proviso) as real estate, the original trust, from the date of such request, becomes a bare trust, though under *ib.*, s. 23, a purchaser may treat the original trust for sale as subsisting until the land is actually conveyed to or by the direction of the beneficiaries. That Act does not prevent a sole trustee for sale who is exclusively and absolutely entitled to the proceeds of sale from making a title as if there were no trust for sale.(*c*)

Election.

Sole trustee.

Express and constructive trusts.

Trusts may be also divided into *express* trusts, and *implied* or *constructive* trusts.

What is an express trust.

The most obvious example of an express trust is where trusts are declared, and trustees appointed to perform them, by a deed,

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Construction of vesting provisions.

Undivided shares.

(*b*) As to restrictions on constructive notice: L. P. Act, 1925, s. 199. Some argument has been put forward to restrict the plain meaning of para. 3 of Pt. II of the 1st Sch. on the ground that the introductory words in s. 39 (2) speak only of "outstanding estates"; but a schedule is just as much part of an Act as a section, and cannot be controlled in this way; moreover, the section is not in terms confined to "bare" outstanding estates. The getting in of the legal estate does not destroy a trust but gives legal effect thereto: *ib.*, 1st Sch., Pt. II, para. 8. In many cases the true owners held in undivided shares; in such cases the legal estate may remain in the nominee as a trustee for sale: *ib.*, Pt. IV, para. 1 (1), and he would only have to appoint another trustee to act with him: T. Act, 1925, s. 36 (6).

(*c*) L. P. (Amend.) Act, 1926, Schedule amending L. P. Act, 1925, s. 36.

Will, or other instrument in writing: *Petre* v. *P.* (1852), 1 Drew. 371. But a writing is not in all cases essential. Thus, if land is conveyed by A. to B., parol evidence is admissible notwithstanding the L. P. Act, 1925, s. 53 (1) (b) (which replaced the Statute of Frauds, s. 7), to show that the intention of the parties was that B. should be a trustee for A., and a trust thus established becomes an express trust: *Rochefoucald* v. *Boustead* [1897], 1 Ch. 196; 66 L. J. Ch. 74. Also where a person occupies a fiduciary position to another (*e.g.*, as agent), money or other property deposited with him on the strength of that position is held by him on an express trust.(*d*) Where a husband borrowed trust money from the trustees of his marriage settlement he was held to be an express trustee: *Re Dixon* [1900], 2 Ch. 561; 69 L. J. Ch. 609.

Instances of implied or constructive trusts.

An *implied* or *constructive* trust is one arising by implication or construction of law from certain circumstances.

Thus, if there is a duly constituted trust, and a stranger to the trust so acts that the court fixes on him the duties and responsibilities of a trustee, that person is a constructive trustee: *Soar* v. *Ashwell, infra.* Again, if A. purchases land in the name of B. and provides the purchase-money, or if he voluntarily transfers stock into the name of B. or the joint names of himself and B., B. will be deemed a trustee for A.: *Cripps* v. *Jee* (1793), 4 Bro. C. C. 472, unless A. is B.'s husband: *Glaister* v. *Hewer* (1803), 8 Ves. 199, or father: *Hepworth* v. *H.* (1870), L. R. 11 Eq. 10; 40 L. J. Ch. 111, or stands to B. *in loco parentis*: *Currant* v. *Jago* (1844), 1 Coll. 261, in which case the purchase or transfer will be considered as an advancement in consideration of the relationship, unless it is shown by evidence or may be presumed from the circumstances that a gift from A. to B. was intended.(*e*)

Rebuttal by relationship.

Trusts for sale implied by law.

There are many trusts for sale implied by statute, *e.g.*—

(1) A trust either to retain or sell land created after 1925 is construed as a trust for sale: L. P. Act, 1925, s. 25 (4);

(2) Of land acquired with the proceeds of other land held on trust for sale: *ib.*, s. 28 (1);

(3) Of land retained for an infant under a partition by trustees for sale: *ib.*, s. 28 (4);

(*d*) *Soar* v. *Ashwell* [1893], 2 Q. B. 390; *North American, &c., Co.* v. *Watkins* [1904], 1 Ch. 242; 2 *ib.* 233; 73 L. J. Ch. 117, 626; *Re Eyre Williams* [1923], 2 Ch. 533; 92 L. J. Ch. 582; *Toates* v. *T.* [1926], 2 K. B. 30.

(*e*) *Batstone* v. *Salter* (1875), L. R. 10 Ch. 431; 44 L. J. Ch. 760; *Standing* v. *Bowring* (1886), 31 Ch. D. 282; 55 L. J. Ch. 218.

(4) Of mortgaged property when the right of redemption is barred : *ib.*, s. 31;

(5) Of land purchased under a power in personalty settlement : *ib.*, s. 32 ; just as a trust for sale would be implied if the land had been purchased in breach of trust;

(6) Of land expressed to be disposed of in undivided shares : *ib.*, ss. 34, 35, or becoming under a settlement liable to be held in undivided shares : S. L. Act, 1925, s. 36. See also the transitional provisions as to land which before 1926 was held in undivided shares : L. P. Act, 1925, 1st Sch., Pt. III, para. 2 (land of an infant and a person of full age not being settled land) ; Pt. IV (land formerly held in undivided shares or where the shares fall into possession after 1925) : *ib.*, para. 2 and S. L. Act, 1925, s. 36;

(7) Of land held by joint tenants (not being settled land): L. P. Act, 1925, s. 36 ; see also as to tenancies by entireties : *ib.*, 1st Sch., Pt. VI;

(8) Of land (not being settled land) passing on an intestacy : Ad. of E. Act, 1925, s. 33.

Resulting trust.

Again, if property is conveyed to a trustee, upon trusts which partly fail or do not exhaust the whole legal interest conveyed, there will, as a general rule, be an implied trust to the extent of the undisposed-of interest for the grantor, which trust is usually called a resulting trust. A resulting trust does not arise under a voluntary conveyance made after 1925 merely because the property is not expressed to be conveyed for the use or benefit of the grantee : L. P. Act, 1925, s. 60 (3). Again, after a contract for sale of land, the vendor is deemed a trustee for the purchaser subject to the payment of the purchase-money. Where a fluctuating body of persons contribute to a fund, vested in trustees and intended to be permanent, for the purpose of performing a particular service for the contributors for the time being, and the need for that service comes to an end, the surplus of the fund, after providing for the purposes of the trust, belongs to the class of contributors ascertained at the date when the purposes of the trust came to an end, in proportion to their contributions.(*f*)

Renewal of lease by trustee in his own name.

A trustee cannot derive any personal advantage from the

(*f*) *Re Customs and Excise Officers Mutual Guarantee Fund* [1917], 2 Ch. 18 ; 86 L. J. Ch. 457 ; as to resulting charitable trusts : *Re British Red Cross Balkan Fund* [1914], 2 Ch. 419 ; 84 L. J. Ch. 79 ; *Re Connell* [1915], 1 Ch. 867 ; 84 L. J. Ch. 601.

administration of the trust property, hence, if a trustee renews a lease in his own name, he will be deemed to hold the new lease for the benefit of his beneficiaries.(g)

Against whom a trust may be enforced.

A trust may be enforced against the person in whom it was originally reposed, and all persons deriving title to the property under him, whether by representation, conveyance, or devise, other than purchasers for valuable consideration without notice of the trust.

Trusts must be declared and disposed of in writing.

The L. P. Act, 1925, s. 53 (1) (b) (replacing Statute of Frauds, s. 7), provides that a declaration of trust respecting any land, or any interest therein, must be manifested and proved by some writing signed by some person who is able to declare such trust or by his Will, but trusts arising or resulting by implication or construction of law are excepted by sub-s. (2). Grants and assignments of trusts must also be in writing and signed by the grantor or his agent duly authorised in writing or by Will: s. 53 (1) (c).

Fraud.

It has been held in numerous cases that the Statute of Frauds could not be pleaded to cover a fraud, *e.g.*, to enable a trustee to retain the trust property as his own, hence, in such cases, parol evidence is admissible to prove the trust: *Re Marlborough* [1894], 2 Ch. 133; 63 L. J. Ch. 471.

SECT. II.—*The powers and duties of trustees as regards sales.*

The T. Act, 1925, reproduces the provisions of the T. Act, 1893, relating to sales by trustees enabling them to sell by auction, &c.: s. 12, and relating to depreciatory conditions: s. 13, and gives a new power to sell any part of the land, whether the division is vertical, horizontal or otherwise. Most important of all is, however, s. 28 of the L. P. Act, 1925, under which trustees for sale have all the powers of tenants for life (including, *e.g.*, power to deal with surface and minerals separately: S. L. Act, 1925, s. 50); they may delegate these powers to certain beneficiaries under s. 29. Purchasers from trustees for sale are not concerned with the trusts of the proceeds of sale which are paid to two trustees or a trust corporation: *ib.*, s. 27.

Not only are the S. L. Act powers exercisable by trustees for sale, but they can also be exercised by personal representatives: Ad. of E. Act, 1925, s. 39.

(g) *Keech* v. *Sandford* (1726), Ch. Cas. 61; *cf. Bevan* v. *Webb* [1905], 1 Ch. 620, and see *Griffith* v. *Owen* [1907], 1 Ch. 195. As to restrictions on renewal of leases: L. P. Act, 1922, 15th Sch., paras. 5 to 8.

Duties of trustees for sale as to price and mode of sale.

Trustees holding land on trust for sale should use proper diligence to obtain the best price, and should take care to satisfy themselves as to the value of the property before they proceed to a sale.(*h*) If they sell by private contract, they should not, as a general rule, sell at a sum below that at which the property has been previously valued; and if they sell by auction, they should properly advertise the intended sale. If the trustees are also entitled to the proceeds they are in the position of absolute owners.

Trustees still liable to beneficiary for selling with improper conditions.

Section 13 does not relieve a trustee from liability to his beneficiary, if he sells under conditions unnecessarily depreciatory and the purchase-money be thereby rendered inadequate.

In the case of every trust for sale of land a power to postpone the sale is implied, unless a contrary intention appears: L. P. Act, 1925, s. 25 (1).

Implied power to postpone sale.

Where a power to postpone sale is implied or expressed in the trust instrument, then, subject to any express direction to the contrary in the trust instrument, the trustees for sale are not liable for postponing the sale, in the exercise of their discretion, for any indefinite period; a purchaser of a legal estate is not concerned with any directions respecting the postponement: *ib.*, s. 25.

Effect of future trust for sale.

A trust for sale to take effect at a future time, or on certain conditions, can only be exercised at the time and in accordance with the conditions prescribed.(*i*) Where there is a future trust for sale, the trustee cannot make title, for under S. L. Act, 1925, s. 30, he merely becomes a trustee for the purposes of that Act. The tenant for life or statutory owner or the personal representatives in whom the legal estate is vested must make title, just as in the case of stocks and shares the persons to make title are the legal owners whose names appear in the register, so in the case of land the person to make title will be the "estate owner" (*i.e.*, the legal owner) who, but only if the title is registered, will be the registered proprietor under the L. R. Act, 1925.

Estate owners.

Power of sale useless.

A power of sale divorced from a legal estate is useless for the purpose of making title: L. P. Act, 1925, s. 1 (7); though

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(*h*) *Conolly* v. *Parsons* (1797), 3 Ves. 625, n.; *Campbell* v. *Walker* (1800), 5 Ves. 678; *Ord* v. *Noel* (1820), 5 Madd. 438; see also *Harper* v. *Hayes* (1860), 2 D. F. & J. 542; *Selby* v. *Bowie* (1863), 4 Giff. 300.

(*i*) See *Johnstone* v. *Baber* (1845), 8 Beav. 233; *Want* v. *Stallibrass* (1873), L. R. 8 Ex. 175; 42 L. J. Ex. 108; *Sykes* v. *Sheard* (1863), 2 D. J. & S. 6; 33 L. J. Ch. 181; *Jeffreys* v. *Marshall* (1870), 19 W. R. 94.

it may constitute S. L. Act trustees: S. L. Act, s. 30. In some cases a power of sale is given to a trustee under a deed of arrangement with creditors, but the better practice is to create a trust for sale. A sole trustee of such a deed can act: L. P. (Amend.) Act, 1926, s. 3.

Deed of arrangement.

Protection of purchaser where land held on trust for sale, beneficiaries cannot call for conveyance of shares.

Under the L. P. Act, 1925, s. 23, where land is held on an express or implied trust for sale, the trust, so far as regards a purchaser, is deemed to be subsisting until the land has been conveyed to or by the direction of the persons interested in the proceeds of sale.(*j*) The fact that the share in the proceeds of sale of one beneficiary had vested in possession never did entitle him to call for an immediate sale of the entirety or for a conveyance of his undivided share in the land.(*k*) The reason was that when land was held on trust for sale it could be disposed of to better advantage as an entire estate. To split it up into undivided shares would have damaged the interests of the beneficiaries. Now, under L. P. Act, 1925, s. 3 (1) (b) (ii) proviso, the beneficiaries absolutely entitled can call on the original trustees for sale to convey the land to not more than four of the beneficiaries on trust for sale. It is a mistake to suppose that a trust for sale in any way hampers dealings which, under the old law, could have been effected by the beneficiaries.

A trust to sell within a given time may be exercised afterwards.

A trust to sell within a given time does not preclude the trustees from selling after that time, if the nature of the trust requires that there must be a sale, notwithstanding the lapse of time, either by the trustees or by the court: *Pearce* v. *Gardner* (1852), 10 Hare, 287; indeed, so far as a purchaser is concerned, the trust for sale remains good till terminated in the manner provided by L. P. Act, 1925, s. 23; nor is a purchaser concerned with directions respecting the postponement of a sale: *ib.*, s. 25 (2).

Trustees can sell by underlease.

Under a trust for sale of leaseholds trustees can sell by way of underlease, reserving a proper proportion of rent in each case, having regard to the head rent.(*l*)

(*j*) This section disposes of the doubts raised in *Re Tweedie and Miles* (1884), 27 Ch. D. 315; 54 L. J. Ch. 71.

(*k*) *Re Horsnaill* [1909], 1 Ch. 631; 78 L. J. Ch. 331; *Re Kipping* [1914], 1 Ch. 62; 83 L. J. Ch. 218. This rule, however, cannot be similarly applied to pure personalty, such as stocks and shares: *Re Marshall* [1914], 1 Ch. 192; 83 L. J. Ch. 307.

(*l*) *Re Judd and Poland* [1906], 1 Ch. 684; 75 L. J. Ch. 403, overruling *Re Walker and Oakshott* [1901], 2 Ch. 383; 70 L. J. Ch. 666; and see L. P. Act, 1925, s. 48 (3).

Sale of land must include the timber.

Trustees for sale must sell the timber with the estate, though there may be a provision against impeachment for waste.(*m*)

Consideration for timber or fixtures paid to wrong person.

Where, on a sale, the consideration for timber or fixtures is paid to the wrong person, and the money is subsequently made good to the trust with interest (if any) at the rate fixed by the court, it may, at the instance of the purchaser or persons deriving title under him, confirm the title: S. L. Act, 1925, s. 49 (3). This would apply whether the sale was made by a tenant for life, statutory owner, trustees for sale, or personal representatives.

Trustees for sale can sell surface and minerals apart without express authority.

Mortgagees.

Tenants for life, trustees for sale and personal representatives can deal separately with surface and minerals without any order of the court: S. L. Act, 1925, s. 50; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39. So also can mortgagees, save where the mortgage is made before 1912 and the statutory powers have not been applied to the mortgage: L. P. Act, 1925, s. 101 (2) (ii). If this power is not available the court may supply the deficiency: *ib.*, s. 92.

Unlimited power of sale in a settlement was valid.

Ceases when the estate vested in fee simple in possession.

A power of sale vested in trustees by a settlement, the proceeds being directed to be laid out in the purchase of land to be settled on the like limitations as the land sold, did not transgress the rule against perpetuities, though no limit was imposed by the terms of the instrument as to the period during which it might be exercised. Such a limit was in fact implied from the nature and object of the power, which was intended to authorise alienation during the continuance of the particular interests created by the settlement, and when those interests determined and the land became vested in fee simple in possession, either under the ultimate limitation in the deed or by reason of a disentailing assurance, the power ceased also. Thus, if before 1926, lands were settled on A. for life, with remainder to the sons of A. successively in tail, with remainder to B. in fee simple, and a power of sale unlimited in terms was vested in trustees, such power remained in force during A.'s life, and, if he left male issue, until a tenant in tail attained twenty-one and barred the entail, and upon that event happening, or on the death of A., if he had no male issue, the power ceased.(*n*) *Semble*, the existence of a jointure rent-charge, the fee simple being vested in possession subject to such

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(*m*) *Cockerell* v. *Cholmeley* (1832), 1 Cl. & F. 60; *Re Llewellin* (1887), 37 Ch. D. 317; 57 L. J. Ch. 316.

(*n*) *Mortlock* v. *Buller* (1804), 10 Ves. at p. 315; *Lantsbery* v. *Collier* (1856), 2 K. & J. 709; 25 L. J. Ch. 672.

jointure, did not keep alive the power.(o) According to the modern practice, a *power* of sale is now rarely, if ever, used, it being sufficient to appoint trustees for the purposes of the S. L. Act. In some cases a power of sale is given to the trustees under a deed of arrangement with creditors, but a trust for sale is preferable. Again, when a tenant in tail barred and there were family charges still on foot, it was formerly the practice to preserve the power of sale during his life and to keep on foot his statutory powers to enable him to over-reach the family charges.

Powers of sale not required.

If a power of sale has once been validly created then the trustees and their successors in office remain the S. L. Act trustees of the settlement so long as the settlement remains subsisting: S. L. Act, 1925, s. 33 (1); a settlement remains on foot so long as any limitation, &c., subsists, or is capable of being exercised, or so long as there is a minority: *ib.*, s. 3. But it ceases as soon as the land becomes subject to a trust for sale: L. P. (Amend.) Act, 1926, Sch. There is no longer any need to keep alive an estate tail to preserve the statutory over-reaching powers of a tenant for life, for an absolute owner subject to family charges has such powers: S. L. Act, 1925, s. 20 (1) (ix), though he can also deal with the land as absolute owner subject to family charges: L. P. (Amend.) Act, 1926, s. 1.

Effect as to S. L. Act trustees.

Duration of settlements.

Absolute owner subject to family charges.

Even in such cases as deeds of arrangement with creditors, a trust for sale (a power to postpone is implied: L. P. Act, 1925, s. 25) is preferable, for no question can arise as to whether it is too remote: *ib.*, s. 23. Moreover, all the statutory powers of a tenant for life(oo) are conferred on trustees for sale: *ib.*, s. 28, but are not conferred on trustees with merely a power of sale. A power of sale conferred by a strict settlement, which extends beyond the purposes authorised by the statutory power, will be exercisable by the tenant for life as an additional power, and not by the persons on whom it is expressed to be conferred: S. L. Act, 1925, ss. 108–9.

Trust for sale preferable to a power of sale.

Express power of sale when exercisable by a tenant for life.

Under the old law, if property was settled, as to one undivided share, for one class of persons, and as to the other share for another class, the fact that one share became absolutely vested in possession did not put an end to the power, which remained

Power remained though an undivided share became vested.

(o) *Wheate* v. *Hall* (1809), 17 Ves. 80; but see as regards the S. L. Act powers, *Re Mundy and Roper* [1899], 1 Ch. 275; 68 L. J. Ch. 135; *Re Cope* v. *Wadland* [1919], 2 Ch. 376; 88 L. J. Ch. 489.

(oo) See also S. L. Act, 1925, s. 36 (2); L. P. Act, 1925, s. 28 (1) and 1st Sch., Pt. IV, para. 1 (3) as amended by L. P. (Amend.) Act, 1926, Sch.

in force until the entirety became vested.(*p*) Now the entirety of the land will vest in trustees for sale: L. P. Act, 1925, ss. 34, 35; 1st Sch., Pt. IV; S. L. Act, 1925, s. 36.

Doctrine did not apply where power was for purpose of division.

The doctrine that a power of sale unlimited in terms ceased so soon as the property became absolutely vested, did not apply where the power was made to take effect on the coming into existence of the absolute limitation, *e.g.*, where property was given to trustees in trust for a class of persons absolutely, either immediately or after the determination of a prior life interest, with a power to sell for the purpose of division. Such a power was held to be valid on the ground that it must from its nature be exercised within a reasonable time, *i.e.*, before the expiration of twenty-one years.(*q*) A future power of sale operates to create S. L. Act trustees: S. L. Act, 1925, s. 30.

Power limited in terms might continue after property had become vested.

Where a power of sale was conferred so as in terms to be exercisable only within the permitted period, such a power remained in force notwithstanding that the property had become absolutely vested, if such appeared to be the settlor's intention and there had been no election by all the beneficiaries to put an end to it.(*r*)

Power of sale subsisted until purposes failed.

A power of sale was not extinguished until all the purposes for which it was originally created had ceased to exist.(*s*)

Power of sale where it authorised a mortgage.

A power to sell in order to raise a sum of money, *semble*, implied a power to mortgage, which was a conditional sale: *Mills* v. *Banks* (1724), 3 P. Wms. at p. 9; but this was only the case when the purpose of the trust would be answered by a mortgage; for if the intention appeared that a sale out and out should be made, a mortgage was not a valid exercise of the power.(*t*)

Implied power to raise money.

Now, if trustees are authorised to pay or apply capital for any purpose, they will have and be deemed always to have had power to raise the money by sale or mortgage: T. Act, 1925, s. 16. This section does not apply to S. L. Act trustees (unless they

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(*p*) *Taite* v. *Swinstead* (1859), 26 Beav. 525; *Re Brown's Settlement* (1870), L. R. 10 Eq. 349; 39 L. J. Ch. 845; and see *Re Horsnaill* [1909], 1 Ch. 631; 78 L. J. Ch. 331; where there was a trust for sale: *Re Kipping* [1914], 1 Ch. 62; 83 L. J. Ch. 218; as to personalty, see *Re Marshall* [1914], 1 Ch. 192; 83 L. J. Ch. 307.

(*q*) *Re Sudeley and Baines & Co.* [1894], 1 Ch. 334; 63 L. J. Ch. 194.

(*r*) *Re Cotton's Trustees and London S. B.* (1882), 19 Ch. D. 624; 51 L. J. Ch. 514; see also *Re Jump* [1903], 1 Ch. 129; 72 L. J. Ch. 16. As to restrictions on power to elect: L. P. Act, 1925, s. 3 (1) (ii).

(*s*) *Re Kaye and Hoyle* (1909), 53 Sol. J. 520; but see now S. L. Act, 1925, s. 33.

(*t*) *Stroughill* v. *Anstey* (1852), 1 D. M. & G. 635; 22 L. J. Ch. 130; *Devaynes* v. *Robinson* (1857), 24 Beav. 86; 27 L. J. Ch. 157; *Re Bellinger* [1898], 2 Ch. 534; 67 L. J. Ch. 580.

are statutory owners: S. L. Act, 1925, ss. 23, 26), for in the case of settled land it is the duty of the tenant for life or statutory owner to raise the money required for giving effect to the settlement: S. L. Act, 1925, ss. 16, 71, 108, 109. A personal representative has power to raise money on mortgage: Ad. of E. Act, 1925, s. 39.

Duty of tenant for life to raise money.

Purchasers and mortgagees dealing with trustees acting under a trust or power are protected by T. Act, 1925, s. 17; special protection is also given where the transaction is expressed to be carried out under s. 16 of the S. L. Act, 1925: see sub-s. (2), also *ib.*, ss. 94–5.

Protection of purchasers and mortgagees.

Powers to partition can be properly ignored, for all land held in undivided shares is subjected to a trust for sale; but trustees for sale, in proper cases, have power to partition land among the persons interested in the proceeds of sale: L. P. Act, 1925, s. 28 (3) (4). Certain contracts for sale made before 1926 by co-owners can be carried out under the old law: *ib.*, 1st Sch., Pt. IV, para. 1 (10); and partition actions commenced before 1926 can be continued if an order for sale or partition is made within eighteen months from 1st January, 1926: *ib.*, para. 1 (10); L. P. (Amend.) Act, 1926, Sch.

Powers to partition.

Partition actions.

Land subject to a discretionary power of sale, as opposed to a trust for sale, retained its character of real estate until sale.(*u*) This is of little importance now, save where a lunatic owner was living and of full age on 1st January, 1926: Ad. of E. Act, 1925, s. 51 (2).

Land remained real estate until power was exercised.

Trust property could always be sold jointly with property belonging to other persons or held on different trusts, if by reason of the situation of the two properties, or for any other reason, a joint sale was likely to produce a better price than separate sales.(*v*) On this principle a joint sale by trustees of the reversion expectant on a lease, and by the owner of the lease, was held good: *Morris* v. *Debenham* (1876), 2 Ch. D. 540.

Trust property sold jointly with other property.

In the case of a joint sale, the trustees have authority to agree with the other vendor as to the apportionment of the purchase-money; this must be done before the purchase is completed, and the purchaser dividing his money according to such apportionment is safe unless he has notice that the apportionment is an improper one: *Re Cooper and Allen* (1876),

Apportionment of purchase-money between trustees and another vendor.

(*u*) *Walter* v. *Maunde* (1815), 19 Ves. 424; Lewin, 12th ed., 1227.

(*v*) *Cavendish* v. *C.* (1875), L. R. 10 Ch. 319; *Re Cooper and Allen* (1876), 4 Ch. D. 802; 46 L. J. Ch. 133. As to including two trust properties in one mining lease, see *Tolson* v. *Sheard* (1877), 5 Ch. D. 19; 46 L. J. Ch. 815.

4 Ch. D. 802. If, however, the two properties are so situated that, *primâ facie*, nothing will be gained by a joint sale, the *onus* lies on the trustees to show that it is a prudent and right thing: *Re Cooper and Allen, supra.*

Joint dealings with undivided shares.

An undivided share in the proceeds of land or in any other property may be dealt with by trustees or personal representatives under any trust or power in conjunction with the owners, &c., of the other shares (without prejudice to the trust for sale affecting the entirety), though any of the trustees or representatives may be interested in the other shares: T. Act, 1925, s. 24.

Contract, if a breach of trust not enforced.

If a trustee enters into a contract for sale which is, under the circumstances, a breach of trust as between himself and his beneficiary, the court will refuse to enforce its specific performance either at the instance of the vendor or of the purchaser, and will, at the instance of the beneficiary, even restrain the vendor from giving effect to it, leaving the purchaser to his remedy in damages, if any.(*w*) To affect a purchaser with notice, a pending action should be registered in regard to the proceedings: L. C. Act, 1925, ss. 2 and 3. If under such a contract the property has been actually conveyed to the purchaser, the question whether it will be set aside may depend on whether he had notice of the breach of trust.

Trustees can give receipt for capital.

Provided that, in the case of trustees for sale and S. L. Act trustees, either a trust corporation is acting or there are at least two individuals, trustees can give a valid receipt for purchase or other capital money, and the purchaser is not liable to see to its application.(*x*)

Bankruptcy trustee, &c.

A sole trustee in bankruptcy and a sole trustee of a deed of arrangement with creditors can, notwithstanding the restriction imposed by L. P. Act, 1925, s. 27 (as amended), give valid receipts as a trust corporation: L. P. (Amend.) Act, 1926, s. 3.

Meaning of "trust corporation."

This section extends the meaning of "trust corporation" as originally defined in L. P. Act, 1925, s. 205 (1) (xxviii), and in S. L. Act, 1925, s. 117 (1) (xxx); the restriction as regards capital money arising under that Act is imposed by s. 94, and the power to give receipts is conferred by s. 95.

Powers to delegate.

Trustees were not, under the old law, justified in delegating to an agent, or even to one of themselves, the power to receive money, and formerly a purchaser, or other person liable to pay

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(*w*) *Dance* v. *Goldingham* (1873), L. R. 8 Ch. 902; 42 L. J. Ch. 777.

(*x*) T. Act, 1925, s. 14, a retrospective enactment which applies notwithstanding anything to the contrary in the trust instrument.

money to trustees, was entitled to insist on all the trustees being personally present to receive and take charge of it or on their giving a written authority for payment of it to their joint account at a bank: *Re Flower* (1884), 27 Ch. D. 592; 53 L. J. Ch. 955.

Cases in which trustees, &c., may appoint agents.

Now, however, trustees and personal representatives may employ and pay agents and are not responsible for the default of the agent if employed in good faith: T. Act, 1925, s. 23 (1). In particular, they may appoint a solicitor to be an agent to receive purchase-money or other consideration by permitting him to have and produce a deed with a receipt therein or thereon: *ib.*, s. 23 (3), as an absolute owner could do under L. P. Act, 1925, s. 69.

Property abroad.

Policies.

Again, authority is given to delegate trusts and powers to agents abroad in respect of property outside the United Kingdom: T. Act, 1925, s. 23 (2); and to authorise a banker or solicitor to give a receipt for insurance money by producing the policy with a receipt: *ib.*, s. 23 (3).

Trustee, &c., going abroad.

A trustee, personal representative, tenant for life and statutory owner going abroad may give a power of attorney in accordance with T. Act, 1925, s. 25, as amended by L. P. (Amend.) Act, 1926, Sch.

Tenant for life who has parted with his interest.

If a tenant for life has parted with his beneficial interest, and refuses to act, the court may make an order authorising the S. L. Act trustees to exercise the statutory powers in his name: S. L. Act, 1925, s. 24; this is an example of statutory delegation. The section is designed to prevent a tenant for life from holding up dealings with settled land unless he is given a bribe to execute the requisite documents.

Powers of trustees transferred to tenant for life as respects settled land.

It is no longer a matter of the powers expressed to be conferred on trustees being subordinated to those given by the S. L. Act to a tenant for life, but all powers relating to dealings with the legal estate in settled land are wholly transferred to the tenant for life or statutory owner: S. L. Act, 1925, ss. 108–9; he is not only a trustee of the legal estate in the land but of the powers: *ib.*, s. 107; and must give effect to the equitable interests and powers: *ib.*, s. 16.

Trustee for sale cannot buy from himself.

A trustee for sale cannot purchase trust property from himself either directly or indirectly,(y) nor, where there are two or more trustees, can one buy from the others. The sale is liable to be set aside, as a matter of course, by the beneficiary, provided that he applies to the court for that purpose within a reasonable time; it is not necessary to show that the trustee has taken any advantage. If before the setting aside of the sale, the trustee has sold at an increased price, the beneficiary may claim the advantage.(*z*)

(y) *Re Postlethwaite* (1888), 59 L. T. 58; Dart., 7th ed., 38; and see articles 130 L. T. Newsp. 457; 46 Sol. J. 226.

Purchase from beneficiaries.

In some cases the difficulty can be got over by arranging a sale from the beneficiaries to the trustee, when this is duly carried out the trustees for sale will be bound to give effect to the transaction. In this case, however, contrary to the general rule, the equitable interests must be brought on to the title to the land. Care must be taken to deal with the trustee estate owners for all ordinary cases; the beneficiaries, alone, not having the legal estate, cannot make title.

Court will authorise purchase by trustee.

The court will generally authorise a purchase by a trustee of the trust property on being satisfied that such purchase is for the benefit of the beneficiary: *Farmer* v. *Dean* (1863), 32 Beav. 327. There is, however, no rule which, in the absence of circumstances of doubt or suspicion, will prevent a person who has entirely ceased to be trustee of an instrument containing a trust for sale from becoming a purchaser of the trust property: *Re Boles, &c., Co.* [1902], 1 Ch. 244; 71 L. J. Ch. 130.

Dealings where tenant for life is interested.

Where, on a dealing with settled land, the transaction takes place with the tenant for life, then, for the purposes of the transaction, the S. L. Act trustees stand in the place of the tenant for life and exercise the powers in his name. These transactions can be carried out though the tenant for life is one of the S. L. Act trustees, or an order has been made authorising the trustees to exercise the powers in his name, or he is a lunatic; but not where the dealings are with a body of persons which includes a S. L. Act trustee (not being the tenant for life), unless action is approved by the Court.

Not applicable to trustees for sale.

It is true that trustees for sale have the powers of a tenant for life (L. P. Act, 1925, s. 28), but the powers conferred by S. L. Act, 1925, s. 68, cannot be adapted to dealings with one of two or more trustees for sale, for the trustees for sale cannot properly represent one of themselves. No power is given for *some* trustees to deal with another member of their own body, but the trustees collectively can deal with the tenant for life though he is also a S. L. Act trustee.

(*z*) *Fox* v. *Mackreth* (1788), 2 B. C. C. 400; *Killick* v. *Flexney* (1792), 4 B. C. C. 161; *Campbell* v. *Walker* (1800), 5 Ves. 678.

Power is given to the court by S. L. Act, 1925, s. 64, to authorise transactions not within the express powers of that Act (subject to an express exception in regard to improvements), and by T. Act, 1925, s. 57, in regard to property vested in trustees (not being S. L. Act trustees), so as to authorise any transaction not within their powers. The sections are not designed for the purpose of varying beneficial interests, created by the trusts of the settlement: S. L. Act, 1925, s. 68.

Transactions generally.

Sect. III.—*The powers, duties, and liabilities of trustees as regards the investment of trust money and the management of trust property.*(a)

Investments.

Authorised investments by trustees.

Settlements and Wills usually contain express trusts for investment and define the investments which may be held and purchased, but an interim investment clause is supplied by S. L. Act, 1925, s. 73.

T. Act, 1925.

Unless expressly forbidden,(*b*) trustees may also invest in or upon the investments authorised by the T. Act, 1925.(*c*)

Bearer securities.

Bearer securities are now authorised: T. Act, 1925, ss. 7, 68 (13), provided that the bonds are deposited with bankers for safe custody and collection of income. The reason for this additional power is not that savings are effected in stamp duty on simple changes of investment, for this is generally represented by a slight addition to the market price, but because large savings in stamp duty can be effected when voluntary settlements are made.

Retainer.

Trustees are not liable for continuing to hold investments which have ceased to be investments authorised by the trust instrument or by general law: *ib.*, s. 4.

Power to vary.

A power to vary investments is given by s. 1 (1), but is generally inserted in trust instruments; under the old law such a power, though omitted, was implied.(*d*)

Extent of liability of trustees in case of loss of trust fund.

If a trustee improperly retains money uninvested, or for want of due care allows it to be lost, he is chargeable with the sum so retained or lost, with interest thereon at 4 per cent.; if he has improperly lent or used the trust money in trade, the beneficiaries

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(*a*) See, generally, Lewin, Godefroi and Underhill on Trusts.

(*b*) T. Act, 1925, ss. 1–11, 69 (2); *Re Burke* [1908], 2 Ch. 248; 77 L. J. Ch. 597; *Re Hill* (1914), 58 Sol. J. 399.

(*c*) See 2 Wolst. & Cherry, 11th ed. For definitions of "trust," "trustee," "stock," &c., see T. Act, 1925, s. 68.

(*d*) *Re Cooper* (1873), W. N. 87; *Re Pope* [1911], 2 Ch. 442; 80 L. J. Ch. 692.

Trading profits.

have the option to charge him either with the profits actually made or with interest at 5 per cent., as being the ordinary rate of interest paid on capital in trade.(*e*)

Rule in *Howe* v. *E. of Dartmouth* repealed as respects land and an intestate's estate.

The rule in *Howe* v. *Earl of Dartmouth* (1802), 7 Ves. 137, to the effect that property invested in a manner not authorised by a Will must be converted and the excess of income treated as capital, has been repealed (*Re Brooker* (1926), W. N. 93), as respects land, by L. P. Act, 1925, s. 28 (2); it does not apply to the estate of an intestate: Ad. of E. Act, 1925, s. 33 (5); it never applied to a settlement by deed.(*f*) Hence, the beneficiaries in reversion under a marriage settlement were never entitled, as against the tenant for life, to attribute to capital the excess of income obtained by an unauthorised investment.(*g*)

Difference between trustees *authorised or required* to invest with consent.

If trustees are *authorised* to invest or change the investment with the *consent* of the tenant for life, neither party can be compelled to acquiesce in the desire of the other, but the voluntary concurrence of both parties is requisite to a valid exercise of the power: *Lee* v. *Young* (1843), 2 Y. & C. 532; 12 L. J. Ch. 478. But where the trustees are authorised *and required* to change the investments at the request of the tenant for life, the court will compel the trustees to comply with the requests of the tenant for life.(*h*) In the investment of capital money under the S. L. Act, the trustees must follow the directions of the tenant for life: S. L. Act, 1925, s. 75, but *semble*, not if they have evidence that the investment is undesirable: *Re Hunt's S. E.* [1906], 2 Ch. 11; 75 L. J. Ch. 496. Whether desirable or not, they are not liable for paying or applying capital money for any authorised purpose: S. L. Act, 1925, s. 98; nor are they liable for the acts of the agents employed by the tenant for life: *ib.*

Investments under S. L. Act.

Sale of stock *cum* dividend.

If, under a power of changing investments, trustees sell trust stock in the interval between two dividend days, the whole of the proceeds is capital, and the tenant for life is not entitled to any compensation for the loss of a proportionate part of the current dividend.(*i*) If, under a direction to sell for the purpose of

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(*e*) *Robinson* v. *R.* (1851), 1 D. M. & G. at p. 255; 21 L. J. Ch. 111; *Re Davis* [1902], 2 Ch. 314; 71 L. J. Ch. 539.

(*f*) *Re Van Straubenzee* [1901], 2 Ch. 779; 70 L. J. Ch. 825.

(*g*) *Slade* v. *Chaine* [1908], 1 Ch. 522; 77 L. J. Ch. 377; *Re Hoyles* (No. 2) [1912], 1 Ch. 67; 81 L. J. Ch. 163.

(*h*) *Beauclerk* v. *Ashburnham* (1845), 8 Beav. 322; 14 L. J. Ch. 241; and see *Cadogan* v. *Essex* (1854), 2 Drew. 227; 23 L. J. Ch. 487.

(*i*) *Scholefield* v. *Redfern* (1863), 2 Dr. & Sm. 173; 32 L. J. Ch. 627; *Freman* v. *Whitbread* (1865), L. R. 1 Eq. 266; 35 L. J. Ch. 137.

distribution, trust stock is sold after the death of the tenant for life and before the next dividend day, the whole of the proceeds goes to the beneficiaries in remainder, without any compensation to the representatives of the tenant for life: *Bulkeley* v. *Stephens* [1896], 2 Ch. 241; 65 L. J. Ch. 597 (though in the special circumstances the claim of the representatives was admitted in that case); but this rule does not apply to the payment of arrears of interest on cumulative preference shares, if such interest accrued before the death of the tenant for life: *Re Sale* [1913], 2 Ch. 697; 83 L. J. Ch. 180.

Purchase of stock *cum* dividend.

The tenant for life is entitled to the whole income derived from investments purchased *cum* dividend: *Re Clarke* (1881), 18 Ch. D. 160; 50 L. J. Ch. 733; except where the dividends have been declared before the purchase: *Re Peel's S. E.* [1910], 1 Ch. 389; 79 L. J. Ch. 233.

Management and liabilities.

Insurance.

Composition.

The T. Act, 1925, authorises trustees to insure: s. 19; and see *Re McEacharn* (1911), 103 L. T. 900; provides for the application of any insurance money where the policy is maintained under any power or obligation: *ib.*, s. 20; and to compound and compromise claims, accept property before the time at which it is made transferable, apportion blended funds, &c.: *ib.*, s. 15.

Acceptance of leases.

A power to accept leases on renewal or otherwise (so far as the law permits: L. P. Act, 1922, 15th Sch., paras. 5, 6, 7, 8) is given by S. L. Act, 1925, s. 53, and this power is exercisable by trustees for sale or personal representatives. All money arising under a trust for sale of land is applicable for the purchase of land which must be conveyed on trust for sale: L. P. Act, 1925, s. 28. It is also applicable for S. L. Act purposes: *ib.*

Indemnity.

Indemnities are given to trustees and personal representatives in regard to rent and covenants by T. Act, 1925, s. 26; by means of advertisements for claimants by *ib.*, s. 27 (as amended by L. P. (Amend.) Act, 1926, Sch.), in regard to notice acquired from having acted in another trust: *ib.*, s. 28, and in regard to acting on powers of attorney by *ib.*, s. 29.

Further indemnities are given to S. L. Act trustees and to personal representatives by S. L. Act, 1925, ss. 96–100.

Extent of trustee's liability for insolvency or fraud of agent.

A trustee is bound to conduct the business of the trust in the same manner as an ordinary prudent man of business, regardful of the future pecuniary interests of those having claims upon him, would conduct his own, and beyond this he is not liable.

Independently of statutory powers he may employ solicitors, brokers, and other agents to do that which in the ordinary course of business other people would employ such persons to do. Hence a trustee or personal representative is not liable for loss arising from the failure of bankers with whom money has been deposited pending distribution or a permanent investment, unless such deposit has been made or allowed to remain without sufficient reason,(*j*) or for the fraud of a broker (including a broker who is a co-trustee authorised to be employed and paid: *Shepherd* v. *Harris* [1905], 2 Ch. 310; 74 L. J. Ch. 574) who embezzles money given to him for investment: *Speight* v. *Gaunt* (1883), 9 A. C. 1; 53 L. J. Ch. 419, provided that he exercised proper care in selecting the broker: *Robinson* v. *Harkin* [1896], 2 Ch. 415; 65 L. J. Ch. 773, or for a theft committed by a servant, provided that the servant is properly entrusted with the custody of the article, and has been selected and employed without negligence; it makes no difference that the trustee is remunerated for his services: *Jobson* v. *Palmer* [1893], 1 Ch. 71; 62 L. J. Ch. 180. A personal representative placing goods in the hands of a tradesman, to be disposed of in the ordinary way of business, is not liable for loss arising from the tradesman becoming bankrupt: *Job* v. *J.* (1877), 6 Ch. D. 562. A trustee has been held liable for a loss occasioned by the fraud of his solicitor, to whom he had given money for investment,(*k*) on the ground that it is not in the ordinary course of business to give money to a solicitor for investment: *Speight* v. *Gaunt, supra.* On the other hand, and in accordance with the above principle, it is apprehended that a trustee is not liable for accepting a title which his solicitor has advised to be good, but which turns out defective.

Deposit account.

Frauds of agents.

Bankruptcy of tradesman.

Trustee liable for fraud or neglect of solicitor in certain cases.

Now trustees and personal representatives are entitled, while an investment is being sought for, to deposit money at a bank on a deposit or other account: T. Act, 1925, s. 11; to pay calls on shares: *ib.*; to employ agents generally: *ib.*, s. 23; and to deposit documents for safe custody with bankers, &c.: *ib.*, s. 21.

Banking accounts.

Agents.

Documents.

Under S. L. Act, 1925, s. 98 (3), documents relating to the settled land (not being securities for capital money) may be

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(*j*) *Johnson* v. *Newton* (1853), 11 Hare, 160; 22 L. J. Ch. 1039; *Wyman* v. *Paterson* [1900], A. C. 271; 69 L. J. P. C. 32; *Re De Pothonier* [1900], 2 Ch. 529; 69 L. J. Ch. 773.

(*k*) *Bostock* v. *Floyer* (1866), L. R. 1 Eq. 26; 35 L. J. Ch. 23; *Sutton* v. *Wilders* (1871), L. R. 12 Eq. 373; 41 L. J. Ch. 30.

properly left with the tenant for life, though in some cases endorsements must be made before they are handed over.

A trustee is not liable if, after receiving notice that a beneficiary has charged his life interest, he continues to pay the trust income to that beneficiary: *Re Pawson* [1917], 1 Ch. 541; 86 L. J. Ch. 380.

Trustee's indemnity, rights of third parties.

A trustee is entitled to be indemnified out of the trust estate for any personal liability incurred in the proper management of it, and in such a case a person recovering damages against a trustee may avail himself of the benefit of this right of indemnity and proceed directly against the trust estate.(*l*)

Trustee may act on a surveyor's report as to value.

In some cases (*m*) a trustee was formerly held liable for lending money on a mortgage security which proved insufficient in value, where he acted on the advice of a surveyor, on the ground that, in the circumstances, he ought to have exercised an independent judgment. A trustee may now safely act on an independent surveyor's (*n*) report if made in accordance with T. Act, 1925, s. 8. The report should state the amount which can be safely advanced.(*o*) A trustee is well advised in not lending more than one-half of the value of business premises, but that is not a definite rule: *Palmer* v. *Emerson* [1911], 1 Ch. 758; 80 L. J. Ch. 418.

Duty of trustees, if mortgaged property has fallen in value.

When mortgaged property on which trust money has been invested falls in value so as to be an insufficient security, it is not the absolute duty of the trustees at once to call in the money, but they have a discretion which they must exercise as practical men with a due regard to all the circumstances of the case, such as the position and solvency of the mortgagor. The prudent course in such a case is to apply to the court for directions by an originating summons.(*p*)

Liability of trustee who lends too large an amount on an authorised security.

If a trustee lends on an authorised security a larger sum than is justifiable, the security is part of the trust property, and the trustee is liable only for the loss which may arise on its realisa-

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(*l*) *Re Raybould* [1900], 1 Ch. 199; 69 L. J. Ch. 249. As to re-imbursement: T. Act, 1925, s. 30; S. L. Act, 1925, s. 100.

(*m*) *Fry* v. *Tapson* (1885), 28 Ch. D. 268; 54 L. J. Ch. 224; *Learoyd* v. *Whiteley* (1887), 12 A. C. 727; 57 L. J. Ch. 390; *Re Olive* (1887), 34 Ch. D. 70; 56 L. J. Ch. 75.

(*n*) See *Shaw* v. *Cates* [1909], 1 Ch. 389; 78 L. J. Ch. 226; *Marquis of Salisbury* v. *Keymer* [1909], W. N. 31; *Re Solomon* [1912], 1 Ch. 261; 81 L. J. Ch. 169, compromised on appeal [1913], 1 Ch. 200; 82 L. J. Ch. 160.

(*o*) *Re Solomon, supra.*

(*p*) *Re Medland* (1889), 41 Ch. D. 476; 58 L. J. Ch. 572; *Re Chapman* [1896], 2 Ch. 763; 65 L. J. Ch. 892.

tion: T. Act, 1925, s. 9. If new trustees are appointed, it is their duty to realise; they are not bound to give the trustee who committed the breach of trust the option of replacing the fund and taking the security: *Re Salmon* (1889), 42 Ch. D. 351.

Effect of right of redemption being barred.

Where trustees acquire land by reason of the right of redemption being barred they hold it, under L. P. Act, 1925, s. 31, on trust for sale, with power to postpone. If it represents capital money under the S. L. Act, the land may be made subject to the settlement by means of a subsidiary vesting deed.

On what principle a loss will be apportioned between tenant for life and remainderman.

If a security is realised at a loss, and there are arrears of interest, the general rule is that the sum recovered ought to be apportioned between the tenant for life and remainderman in proportion to the amounts due at the date when it was recovered in respect of arrears of interest and in respect of principal: *Re Broadwood* [1908], 1 Ch. 115; 77 L. J. Ch. 18.

Land purchased by trustees which is not conveyed on trust for sale.

Where trustees purchase land under powers in a money settlement executed after 1911, which does not direct the land to be held on trust for sale, the L. P. Act, 1925, s. 32, supplies the necessary trust and directions as to the application of the rents and profits until sale. This section was required not merely to remove the doubt whether title ought to be made as if there were a mere power of sale as opposed to a trust for sale, but to make it clear that the land acquired devolved under the settlement or Will as personal estate. The trusts would generally be inapplicable to real estate, with the result that the land might have passed in a different direction from the personalty settled.

Trust to retain or sell.

Now a trust, either to retain or sell, created after 1925, will be construed as a trust to sell (q) with a power to postpone: *ib.*, s. 25 (4).

Trustee to sell real estate improperly purchased.

If a trustee buys real estate with trust money, having no power to do so, the beneficiaries may (subject to L. P. Act, 1925, s. 3 (i) (b) (ii) proviso) elect to adopt the purchase: *Wiles* v. *Gresham* (1854), 2 Drew. 258; 23 L. J. Ch. 667. But if they do not all concur in such election, or any of them are under disability, it is the duty of the trustee to re-sell; in fact, the property is, by virtue of the breach of trust, stamped with an implied trust for sale. Under the L. P. Act, 1925, s. 32, the trustees are given an implied power to postpone the sale only where they have power to purchase land; *semble*, the same principle would be applied to s. 25, which confers a power to postpone unless a contrary intention appears. If the money produced by the re-sale is more than was given for the property, the whole belongs to the trust; if less, the trustees must make up the deficiency. Under *ib.*, s. 23, the purchaser will obtain a good title in relying on the implied trust for sale unless the land has been conveyed to or by the direction of the persons interested in the proceeds of sale. This section is retrospective.

(q) This section in effect confirms the decision in *Re Crips* (1907), 95 L. T. 865.

Joint receipts.

Where there are two or more trustees, they must (subject to the powers for the majority of charity trustees to act on behalf of all) all join in a receipt for trust money payable to them; in the case of executors the receipt of those who prove is sufficient: Ad. of E. Act, 1925, ss. 2 (2), 8, 24. Though a personal representative may become a trustee for sale for administration purposes: *ib.*, s. 33, this does not prevent a sole personal representative, in his capacity as such, from giving valid receipts: L. P. Act, 1925, s. 27 (2), as amended by L. P. (Amend.) Act, 1926, Sch. Where all the trustees join, they will all *primâ facie* be considered as having received the money; but one of them may show that the money was in fact received by the others, and that he joined only for conformity: T. Act, 1925, s. 30; S. L. Act, 1925, s. 96. In that case he is not answerable for a misapplication by the others. But a trustee, though not liable for merely permitting his co-trustees to receive the money, is not justified in allowing it to be retained by the latter for longer than the circumstances require: *Brice* v. *Stokes* (1805), 11 Ves. 319.

Money received by co-trustee.

Trustees jointly and severally liable for breach of trust.

Where a breach of trust is committed, the trustees are jointly and severally liable to the beneficiaries to make good the loss, and if one of them is compelled to pay the whole he is entitled to a contribution from the others, assuming that they are all *in pari delicto*. The fact that one trustee leaves the management of the trust to the others does not entitle him to an indemnity from them, unless there are some special circumstances, as where the active trustee is the solicitor for the trust or has derived a personal benefit from the breach.(*r*)

Right to contribution *inter se*.

Where a breach of trust is committed at the request or with the assent of a beneficiary, his share in the trust fund is primarily liable to make good the loss.(*s*) In accordance with this doctrine,

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(*r*) *Bahin* v. *Hughes* (1886), 31 Ch. D. 390; 55 L. J. Ch. 472; *Jackson* v. *Dickinson* [1903], 1 Ch. 947; 72 L. J. Ch. 761; and see *Re Linsley* [1904], 2 Ch. 785; 73 L. J. Ch. 841.

(*s*) *Trafford* v. *Boehm* (1746), 3 Akt., at p. 444; *Raby* v. *Ridehalgh* (1855), 7 D. M. & G. 104; 24 L. J. Ch. 528; and see *Fletcher* v. *Collis* [1905], 2 Ch. 24; 74 L. J. Ch. 502.

the T. Act, 1925, s. 62 (reproducing T. Act, 1893, s. 45), enables the Court to impound the interest of a beneficiary, even as against a married woman restrained from anticipation: 2 Wolst. and Cherry, 11th ed.

Decisions on construction of s. 6 of the Act of 1888, and s. 62 of the Act of 1925.

It has been held on the construction of that section and of s. 6 of the T. Act, 1888, that the words "in writing" apply only to a consent, and not to a request;(*t*) and (2) that in order to make a beneficiary liable, in respect of an improper investment, it must be shown not only that he instigated, requested, or consented in writing to the investment, but that he knew the facts which would make it a breach of trust: *Re Somerset* [1894], 1 Ch. 231; 63 L. J. Ch. 41.

Liability where one of trustees committing breach is a beneficiary.

When a breach of trust is committed by two trustees, one of whom is a beneficiary, and the circumstances are such that, if neither had been a beneficiary, both would have been *in pari delicto*, the interest of the trustee who is also a beneficiary in the trust fund is primarily liable to make good the loss to the other beneficiaries. If this is insufficient, the deficiency must be made good by the two trustees as between themselves in equal shares.(*u*)

Application of Limitation Acts to trusts.

It was formerly the law that, as regards express trusts, the Limitation Acts did not apply between a trustee and beneficiary. This rule has been modified by the following enactments:—

Express trust not to exclude statute.

LIM. ACT, 1874, s. 10.

After the commencement of this Act no action, &c., shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, except within the time within which the same would be recoverable, if there were not any such trust: See Carson, 2nd ed., 208, as to this section.

Construction of Act of 1888, s. 8.

Again, the T. Act, 1888, s. 8, enables trustees in certain cases to plead the Limitation Acts.(*v*)

This section has been held to apply:—

(1) Where a newly-appointed trustee of a Will brought an

(*t*) *Griffith* v. *Hughes* [1892], 3 Ch. 105; 62 L. J. Ch. 135; *Mara* v. *Browne*, [1895], 2 Ch. 69; reversed on the grounds of no trusteeship: see [1896], 1 Ch. 199; *Fletcher* v. *Collis* [1905], 2 Ch. 24; 74 L. J. Ch. 502.

(*u*) *Chillingworth* v. *Chambers* [1896], 1 Ch. 685; 65 L. J. Ch. 343; *Robinson* v. *Harkin* [1896], 2 Ch. 415; 65 L. J. Ch. 773; see also *Re Towndrow* [1911], 1 Ch. 662; 80 L. J. Ch. 378.

(*v*) 2 Wolst. & Cherry, 11th ed. This section has not been incorporated in the T. Act, 1925, for it is proposed to deal with it when the Limitation Acts are consolidated.

action against an old trustee and the representatives of a deceased trustee to make good losses arising from improper investments made more than six years before: *Re Bowden* (1890), 45 Ch. D. 444; 59 L. J. Ch. 815;

(2) Where a tenant for life brought an action against the trustees for a loss arising from an investment on a mortgage of land of insufficient value made more than six years before, notwithstanding that interest on the mortgage had been regularly paid to the beneficiary: *Re Somerset* [1894], 1 Ch. 231; 63 L. J. Ch. 41;

(3) Where the trustee of a Will under which an infant was residuary legatee was called on twelve years after the latter attained twenty-one to account for the residue, and the trustee stated that he had expended it for the infant's maintenance during minority;(*w*)

(4) Where trustees paid over the capital of a settled legacy to the tenant for life and the action was not commenced till more than six years after the tenant for life's death.(*x*)

The section does not extend to an annuity charged upon real estate and secured by an express trust where the trustee still remains in possession of the property upon which it is charged: *Re Jordison* [1922], 1 Ch. 440; 91 L. J. Ch. 497.

The fraud of a trustee's agent of which the trustee is ignorant does not deprive him of the benefit of the section: *Thorne* v. *Heard* [1895], A. C. 495; 64 L. J. Ch. 652.

Where a trustee, who was directed to accumulate rents for a term of years, applied them in a different way without any fraudulent intent, and an action was brought against him after the end of the term by a person interested in the accumulations, it was held that the trustee was liable only as regards rent received and applied by him during the six years before the issue of the writ.(*y*)

The T. Act, 1925, s. 61 (replacing Jud. T. Act, 1896, s. 3), also enables the Court in proper cases to relieve trustees from

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(*w*) *Re Page* [1893], 1 Ch. 304; 62 L. J. Ch. 592; and see *Re Sharp* [1906], 1 Ch. 793; 75 L. J. Ch. 458.

(*x*) *Re Timmis* [1902], 1 Ch. 176; 71 L. J. Ch. 118; and see *Lacons* v. *Warmoll* [1907], 2 K. B. 350; 76 L. J. K. B. 914; *Re Blow* [1914], 1 Ch. 233; 83 L. J. Ch. 185.

(*y*) *How* v. *Earl Winterton* [1896], 2 Ch. 626; 65 L. J. Ch. 832; cf. *Re Davies* [1898], 2 Ch. 142; 67 L. J. Ch. 507.

liability in respect of breaches of trust,(*z*) even where trust money has been paid to the wrong person.(*a*)

Power to relieve trustee from personal liability.

When a trustee applies for relief under this section the *onus* lies on him to show that he has acted honestly and reasonably.(*b*) Whether he has acted reasonably depends on the circumstances of each case, and one of the tests is whether he would have acted in the way he did had he been dealing with his own money.

Relief refused.

Relief has been refused :—

(1) To a trustee who invested on a mortgage without making any inquiry as to the nature and value of the property, relying entirely on his co-trustee, who was a solicitor : *Re Turner* [1897], 1 Ch. 536 ; 66 L. J. Ch. 282 ;

(2) To a trustee who, in lending money did not observe the requirements of T. Act, 1925, s. 8 ; no special circumstances were put forward in explanation : *Re Stuart* [1897], 2 Ch. 583 ; 66 L. J. Ch. 780 ;

(3) To a trustee who invested on a second mortgage without taking proper advice : *Chapman* v. *Browne* [1902], 1 Ch. 785 ; 71 L. J. Ch. 465.

A trustee does not entitle himself to relief by proving that he has acted reasonably and honestly ; he must show that in all the circumstances he ought fairly to be excused for his breach of trust.(*c*)

Relief granted.

On the other hand, relief has been granted :—

(1) Where trustees, erroneously assuming that they had a power of sale, sold leaseholds and thereby diminished the income of the tenant for life : *Perrins* v. *Bellamy* [1899], 1 Ch. 797 ; 68 L. J. Ch. 397 ;

(2) Where executors acting reasonably and honestly paid to their solicitors various sums to be applied in administration of the estate, but which the solicitors misapplied : *Re Lord De Clifford* [1900], 2 Ch. 707 ; 69 L. J. Ch. 828 ;

(3) Where an executor committed a *devastavit*, supposing, with reason, that the estate was ample to meet the debts : *Re Kay* [1897], 2 Ch. 518 ; 66 L. J. Ch. 759, but in a case of this

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(*z*) 2 Wolst. & Cherry's Conv. Statutes, 11th ed. ; *Re Mackay* [1911], 1 Ch. 300 ; 80 L. J. Ch. 237.

(*a*) *Re Allsop* [1914], 1 Ch. 1 ; 83 L. J. Ch. 42 ; *Re Brookes* [1914], 1 Ch. 558 ; 83 L. J. Ch. 424 ; *Re Pawson* [1917], 1 Ch. 541 ; 86 L. J. Ch. 380.

(*b*) *Re Dive* [1909], 1 Ch. 328 ; 78 L. J. Ch. 248 ; *Shaw* v. *Cates* [1909], 1 Ch. 389 ; 78 L. J. Ch. 226 ; and see *Re Houghton* [1904], 1 Ch., at p. 626 ; 73 L. J. Ch. 317.

(*c*) *National Trustees Co. of Australasia* v. *General Finance, &c., Co.* [1905], A. C. 373 ; 74 L. J. P. C. 73.

kind, advertising for claims must not be unduly postponed; relief was refused where the *devastavit* was committed after a creditor had issued a writ claiming a large amount: *Re Kay, supra.*

SECT. IV.—*Disclaimer.*

Disclaimer.

If a person appointed to be a trustee by deed or Will is desirous of disclaiming the trust, and has done no act which would amount to an acceptance of it, he should execute a deed of disclaimer in proper form, bearing in mind that any form is incorrect which affects to convey and release property the trusts whereof he disclaims.(*d*)

Disclaimer of legal estate affected by rent.

Power is given by L. P. Act, 1925, 1st Sch., Pt. II, para. 7 (m), introduced by L. P. (Amend.) Act, 1926, Sch., for a person or his personal representatives to disclaim in writing a legal estate affected by rent or onerous covenants to which he would otherwise have become entitled under the statutory vesting provisions.

Disclaimer by married woman.

If a married woman disclaims it should be by deed: L. P. Act, 1925, s. 168.

Disclaimer in bankruptcy.

Disclaimers under Bkcy. Act, 1914, need not be under seal: L. P. Act, 1925, s. 52; or when not required to be evidenced in writing: *ib.*

What is acceptance of a trust.

What will amount to the acceptance of a trust must depend upon the acts or conduct of the trustee. For instance, the execution of the deed by which the trust is created, or any interference in the management of the estate under the trusts of the deed, would be regarded as an acceptance.

Probate acceptance of trust.

There can be no disclaimer of a trust which has once been accepted; where the trustees are also executors, the probate of the Will amounts to an acceptance of the trust: *Mucklow* v. *Fuller* (1821), Jac. 198. On the other hand, a renunciation of the executorship is not of itself a disclaimer of the trust. If an executor is allowed to withdraw his renunciation this operates without prejudice to previous acts by and notices to any other representative, who has previously proved: Ad. of E. Act, 1925, s. 6.

Renunciation of probate.

Revocation of one office does not revoke other.

When a person is appointed trustee and executor, and by a codicil the testator revokes the appointment of that person, as executor, this does not amount to a revocation of the trusteeship: *Graham* v. *G.* (1853), 22 L. J. Ch. 937.

Partial disclaimer.

A trustee cannot disclaim as regards a part only of the property

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(*d*) *Nicloson* v. *Wordsworth* (1818), 2 Swanst. 365; *Urch* v. *Walker* (1838), 3 My. & Cr. at p. 710; 7 L. J. Ch. 292.

devised to him: *Re Lord and Fullerton* [1896], 1 Ch. 228; 65 L. J. Ch. 184.

Disclaimer by conduct.

The acceptance by a devisee of a devise to him is presumed unless he disclaims, but he may disclaim by conduct as well as by deed: *Re Clout & Frewer* [1924], 2 Ch. 230; 93 L. J. Ch. 624. After 1925, a devise only operates in equity.

Refusal to receive the income of a legacy held on trust cannot be treated as a disclaimer of the legacy as regards future income, unless it is supported by consideration, or has changed the position of interested persons: *Re Young* [1913], 2 Ch. 272; 82 L. J. Ch. 171.

Conduct which amounts to a disclaimer of the office of trustee is a disclaimer also of the legal estate: *Re Birchall* (1889), 40 Ch. D. 436.

Consequences of disclaimer.

The effect of a disclaimer is to put all parties in the same position as if the disclaiming party had not been named in the trust instrument, except that it leaves a vacancy in the trusteeship. If a sole trustee and executor or all the executors under a Will disclaim, the legal estate in freeholds and leaseholds will pass to the administrators when appointed, under Ad. of E. Act, 1925, Pt. I. If one of two or more trustees disclaims, the others take the legal estate, also the powers and authorities requisite for the administration of the trust. The disclaimer must be absolute, and is irrevocable.(*e*)

A power may be disclaimed.

Under L. P. Act, 1925, s. 156, a person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power, and on such disclaimer the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom it is given. But the statutory powers conferred on a tenant for life are not capable of assignment or release: S. L. Act, 1925, s. 104. This does not prevent a tenant for life from disclaiming his life interest and so losing his powers.

SECT. V.—*The appointment of new trustees, the discharge of trustees, and the powers conferred by statute for these purposes.*

Provisions in Trustee Act as to appointment of new or additional trustees.

The T. Act, 1925, ss. 35–40, contain provisions with respect to the appointment of new or additional trustees. These provisions apply to and include trustees for the purposes of the

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(*e*) *Semble*, the dictum to the contrary of Swinfen Eady, J., in *Re Young*, *supra*, cannot be accepted.

S. L. Act, whether appointed by the court or by the settlement, or under provisions contained in the settlement: *ib.*, s. 64. Under that section the persons nominated to appoint new trustees of the settlement will, after 1925, be the persons to appoint new or additional trustees, though the S. L. Act trustees were originally appointed by the court.

Appointment of S. L. Act trustees.

Before 1926, if S. L. Act trustees had been appointed by the court, their successors were rightly treated as the persons having power to appoint trustees in their place. In some cases this practice was ignored and S. L. Act trustees were expressed to be appointed by the person nominated by the settlement to appoint new trustees for other purposes. Such appointments, though obviously unauthorised, are confirmed, subject to any orders of the court: *ib.*, s. 64.

Increase of number.

The number of trustees may be increased: s. 37 (1) (a), provided that the number is not in the case of settlements and dispositions on trust for sale of land made to exceed four: *ib.*, s. 34. An additional trustee can now be appointed where there is no vacancy: s. 36 (6), subject to the restrictions as to number. This in effect over-rules *Re Gregson* (1887), 34 Ch. D. 209; 56 L. J. Ch. 286. Under S. L. Act, 1925, s. 30 (3), where a sole personal representative (not being a trust corporation), becomes a S. L. Act trustee, he is bound to appoint an additional trustee to act with him unless he retires, and new trustees are appointed in his place.

Trustees dying before testator and trustees who disclaim or retire.

The provisions relating to a dead trustee apply where a trustee dies in a testator's lifetime, and the provisions relating to a continuing trustee apply to a refusing or retiring trustee if willing to appoint: T. Act, 1925, s. 36 (8).(*f*)

Representatives of last surviving or sole trustee.

Where the representatives of a last surviving or sole trustee act, they are ousted immediately the donees of a power of appointing new trustees exercise their power: *Re Routledge* [1909], 1 Ch. 280; 78 L. J. Ch. 136. The acting personal representatives of a sole or last surviving trustee may act in the trust until new trustees are appointed: T. Act, 1925, s. 18; S. L. Act, 1925, s. 34 (2). These provisions (relating to survivorship of trusts), taken with T. Act, 1925, ss. 36 (7), 43, render it undesirable to define "the trustees" as including the survivor of them or the representatives of the survivor or other the trustees or trustee for the time being of the trust instrument.

Definition unnecessary.

(*f*) *Re Norris* (1884), 27 Ch. D. 333; 53 L. J. Ch. 913; *Re Coates* to *Parsons* (1886), 34 Ch. D. 370; 56 L. J. Ch. 242.

Number of trustees.

If, before 1926, there were more than four trustees for sale or S. L. Act trustees, they can continue to act, but after 1925 the number must not be increased beyond four: T. Act, 1925, s. 34. This restriction does not apply to charity trustees.

Separate appointments of trustees for sale.

Where trusts of the proceeds of sale of land are declared by a separate instrument to that whereby the trust for sale is created (*e.g.*, by a Will and an Assent on trust for sale, or by a personalty settlement and a conveyance on trust for sale), there must be separate appointments of new trustees of each instrument: T. Act, 1925, s. 35 (1). One relates to the equitable interests, namely, the proceeds of sale, and the other to the legal estate, but the same persons must be appointed of both instruments: *ib.* This merely gives statutory confirmation to a practice which has been in force for many years.

Protection of purchasers.

Though the persons having power to appoint new trustees of a conveyance or assent on trust for sale are bound to appoint the same persons (if any) who are the trustees of the settlement of the proceeds, a purchaser is not concerned to see that the proper persons are appointed trustees of the land: L. P. Act, 1925, s. 24. This is another thread in the curtain masking the equitable interests.

Memorandum of appointment endorsed.

To keep the history up to date, when a new trustee (including an additional trustee: T. Act, 1925, s. 68 (17)) of a conveyance or assent on trust for sale is appointed, a memorandum stating who are for the time being the trustees for sale will be endorsed on the conveyance or assent relating to the legal estate: *ib.*, s. 35 (3).

Appointment of S. L. Act trustees.

When new S. L. Act trustees are appointed of the settlement (*e.g.*, the deed, Will or compound settlement, &c., declaring the trusts), there will be no separate appointment of S. L. Act trustees of the vesting instrument (relating to the legal estate); instead there will be a deed declaring who are the S. L. Act trustees for the time being: S. L. Act, 1925, s. 35; this also applies when a trustee is discharged without a new appointment: *ib.*

Memorandum on vesting instrument.

On all such occasions there will be a memorandum on the principal vesting instrument stating who are the existing S. L. Act trustees, giving their names and addresses: *ib.*; T. Act, 1925, s. 35 (2).

Protection of purchasers.

A purchaser can rely on the statements contained in a deed declaring who are the existing S. L. Act trustees: S. L. Act, 1925, s. 110 (2) (e). He can also rely on the original statement in the vesting instrument: *ib.*, s. 110 (2) (b).

Appointments in place of infants.

An infant can no longer act as a trustee or personal representative: L. P. Act, 1925, ss. 19 (4)–(6), 20; 1st Sch., Pt. II, para. 7 (g), Pt. III, paras. 3 and 4; Jud. Act, 1925, s. 165. Express power is now given to appoint new trustees in place of an infant: T. Act, 1925, s. 36 (1).

Presumption.

There is now a presumption that the parties to a conveyance are of full age: L. P. Act, 1925, s. 15.

Appointment in place of trustee removed.

If a trustee is removed under a power in a trust instrument (" instrument " in T. Act, 1925, includes a statute: *ib.*, s. 68 (5)), the powers apply as if he were dead or in the case of a corporation desired to be discharged: *ib.*, s. 36 (2).

Appointment in place of Public Trustee.

Under L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (4) (iii) (as amended by L. P. (Amend.) Act, 1926, Sch.), the persons entitled to more than a moiety " may appoint new trustees in place of the Public Trustee "; this is not strictly a case of " removal," the Public Trustee *ex hypothesi* has not been requested to act and has not consented to act. It is an independent express power, and on the exercise thereof, the land by the Act itself (as amended) vests in the new trustees on the statutory trusts.

Appointment of self.

The appointors can appoint themselves, the power does not refer to " other persons," *cf.*, T. Act, 1925, s. 36 (1).

Dissolution of corporation.

If a corporation is dissolved it becomes incapable of acting, and the statutory power becomes exercisable: T. Act, 1925, s. 36 (3); as to vesting orders: *ib.*, ss. 44 (ii) (c), 51 (1) (ii) (c). The court has power to re-create a legal estate which determines by reason of the dissolution: L. P. Act, 1925, s. 181. The possibility that a fee simple may determine by reason of the dissolution does not prevent it being a legal estate: *ib.*, s. 7 (2).

Acting executors.

Acting executors can exercise a power to appoint new trustees without the concurrence of an executor who has renounced or has not proved: T. Act, 1925, s. 36 (4).

Renouncing executors.

Executors intending to renounce can also appoint new trustees without accepting the executorship: *ib.*, s. 36 (5).

Additional trustees.

Where a trust corporation is not acting and there are not more than three trustees, additional trustees can be appointed under *ib.*, s. 36 (6), though there is no vacancy in the trust. There may be a question whether the persons nominated to appoint new trustees could, under this sub-section, appoint themselves as additional trustees, for the words " whether or not being the persons exercising the power " which occur in sub-s. (1), have not been inserted.

Separate trustees as to distinct trusts.

Separate sets of trustees may be appointed for the purposes of distinct trusts : *ib.*, s. 37 (1) (b), but a sole trustee, not being a trust corporation, must not be appointed unless when appointed he will, see the restrictions in L. P. Act, 1925, s. 27 (2) (as amended), and in S. L. Act, 1925, ss. 94, 95, be able to give valid receipts for capital : T. Act, 1925, s. 37 (2) ; nor can a trustee be discharged unless there will be either a trust corporation or at least two individuals left to act : *ib.*, s. 37 (1) (c). The meaning of " trust corporation " has been extended by L. P. (Amend.) Act, 1926, s. 3.

Appointment of sole trustee.

Restriction on discharge of a trustee.

Evidence of vacancy.

Recitals showing, in certain cases, that there is vacancy in the trusteeship are made conclusive in favour of a purchaser: T. Act, 1925, s. 38.

Retirement without a new appointment.

The retirement of a trustee without an appointment of a new trustee is provided for by *ib.*, s. 39.

Implied vesting declarations.

Implied vesting declarations on the appointment or discharge of a trustee are provided for by *ib.*, s. 40. This also removes certain doubts as to the validity of vesting declarations made under T. Act, 1893, s. 12. Vesting declarations (express or implied) generally transfer legal estates : L. P. Act, 1925, s. 9.

Stamp.

At present the Inland Revenue do not demand an additional 10s. stamp on an implied vesting declaration, but where this practice is relied on the stamp should be adjudicated.

Registered land.

Effect will be given on the register to vesting declarations express or implied : L. R. Act, 1925, ss. 82 (1) (g), 103.

Additional statutory powers to appoint new trustees.

In addition to the powers to appoint new or additional trustees given to persons by T. Act, 1925, ss. 36 and 37, or to the court, attention should be drawn to the following special powers or provisions :—

Undivided shares in proceeds of sale.

(1) Persons absolutely entitled in undivided shares to proceeds of sale of land may require the land to be conveyed to not more than four of themselves on trust for sale : L. P. Act, 1925, s. 3 (1) (b) (ii) proviso.

Trustees for infant.

(2) Trustees for sale, when effecting a partition, can constitute themselves trustees for sale of land held for an infant : *ib.*, s. 28 (4).

Dispositions in undivided shares or to joint tenants.

(3) Dispositions in undivided shares or to joint tenants (not of settled land or charity land) create trustees for sale : *ib.*, ss. 34–36 ; 1st Sch., Pt. IV ; S. L. Act, 1925, s. 36.

Parents or guardian of infant beneficiary (additional trustee).

(4) Where a legal estate formerly vested in an infant and others, becomes vested in one person as trustee, and no other person is able and willing to do so, the parents or guardian of

the infant may appoint an additional trustee: L. P. Act, 1925, 1st Sch., Pt. III, para. 2, proviso.

In place of Public Trustee (infant's estate).

(5) Where a legal estate held by an infant in a fiduciary capacity or as mortgagee vests in the Public Trustee, and no other person is able and willing to make the appointment, the parents or guardians may appoint new trustees in place of the Public Trustee: *ib.*, para. 3 (i). They can also do so in the case of settled land: S. L. Act, 1925, 2nd Sch. para. 3 (1) (iv).

Infant's trust or mortgage estate.

(6) Where an infant's trust or mortgage estate becomes vested in a sole co-trustee or mortgagee, and no other person is able and willing to do so, the parents or guardians may appoint new trustees in place of the infant: L. P. Act, 1925, para. 4 (b) proviso.

In place of Public Trustee (settled land).

(7) Where settled land held in undivided shares becomes (for want of S. L. Act trustees) vested in the Public Trustee, the persons having power under the settlement to appoint new trustees can appoint trustees in place of the Public Trustee: *ib.*, Pt. IV, para. 3 (v).

In place of Public Trustee (land held in undivided shares).

(8) Where, for any other reason, land, held in undivided shares, vests in the Public Trustee, the persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in place of the Public Trustee, with the consent of any incumbrancers of undivided shares: *ib.*, para. 4 (iii).

Infant's property under a Will or intestacy.

(9) Where under a Will or on an intestacy an infant becomes entitled to property not given to trustees, then the personal representatives may appoint a trust corporation, or two or more individuals not exceeding four, to be trustees of the property: Ad. of E. Act, 1925, s. 42.

Discharge of trustees.

Independently of any statute, a trustee may apply to the court to be discharged from the trust, but he will have to pay the costs of the action unless he can show that circumstances have arisen which alter the nature of his duties.(*g*) The representative of a deceased sole trustee may decline to act, and will be entitled to the costs of any proceedings for the appointment of a new trustee.(*h*) It is conceived that this is not affected by T. Act, 1925, s. 18, for that section only gives a power for the representative to act. In such cases there can be no objection to the personal representatives of the deceased trustee themselves appointing new trustees.

Personal representative refusing to act as trustee.

(*g*) *Forshaw* v. *Higginson* (1855), 20 Beav. 485; *Gardiner* v. *Downes* (1856), 22 Beav. 395; 25 L. J. Ch. 881.

(*h*) *Legg* v. *Mackrell* (1860), 2 D. F. & J. 551; *Re Ridley* [1904], 2 Ch. 774; 73 L. J. Ch. 696; *Re Benett* [1906], 1 Ch. 216; 75 L. J. Ch. 122.

Where one of two trustees disclaims, the other may retire and appoint trustees.

Under the statutory power, a retiring trustee, being one of two originally appointed, may appoint a trustee in his own place, the other having previously disclaimed ;(*i*) but he must appoint a trust corporation, or at least two trustees, if a sole trustee would not have power to give receipts for capital : T. Act, 1925, s. 37 (2).

Meaning of "acting trustees."

Under the old law, where an express power to appoint new trustees was given to the "acting trustees for the time being," it was held that the co-heiresses of the last surviving trustee came within this description, the mere fact of their making the appointment being sufficient to constitute them "acting trustees" ;(*j*) but representatives can appoint new trustees without accepting the trust.

Beneficiary may be appointed.

A person beneficially interested, including a tenant for life under a settlement, may be appointed a new trustee, unless the instrument shows an intention to the contrary.(*k*)

Donee may appoint himself.

An appointment of the donee himself, or one of the donees, is now generally proper : T. Act, 1925, s. 36 (1), see the words "whether or not being the persons exercising the power."(*l*)

Appointment of self.

A similar power to appoint the donees, or any of them, is given to personal representatives when appointing trustees of infant's property : Ad. of E. Act, 1925, s. 42. Whether a person nominated to appoint new trustees can appoint himself as an additional trustee under T. Act, 1925, s. 36 (6), apart from some express provision, is perhaps still doubtful. If the nominee refused to exercise the power it would not prevent the trustees from appointing him to act with them.

Solicitor or husband.

Appointments by the donee of his solicitor, or of the husband of the donee, are good, though not being appointments which the court would generally make.(*m*)

Consent of assign of tenant for life not necessary.

If a tenant for life with a power to appoint new trustees sells or mortgages his life interest, the consent of the purchaser or mortgagee to an exercise of the power is not necessary.(*n*)

(*i*) *West of England, &c., Bank* v. *Murch* (1883), 23 Ch. D. 138 ; 52 L. J. Ch. 784.

(*j*) *Re Cunningham and Frayling* [1891], 2 Ch. 567 ; 60 L. J. Ch. 591.

(*k*) *Forster* v. *Abraham* (1874), L. R. 17 Eq. 351 ; 43 L. J. Ch. 199.

(*l*) As to the old law, see *Re Skeat* (1889), 42 Ch. D. 522 ; 58 L. J. Ch. 656 ; *Montefiore* v. *Guedalla* [1903], 2 Ch. 723 ; 73 L. J. Ch. 13 ; *Re Sampson* [1906], 1 Ch. 435 ; 75 L. J. Ch. 302 ; *Re Coode* (1913), 108 L. T. 94.

(*m*) *Re Earl of Stamford* [1896], 1 Ch. 288 ; 65 L. J. Ch. 134 ; *Re Spencer's S. E.* [1903], 1 Ch. 75 ; 72 L. J. Ch. 59.

(*n*) The old cases which decided that a power of sale or leasing could not be exercised by a tenant for life without the consent of his alienee were founded

Surviving trustee cannot appoint special executor for purpose of statutory power.

A sole surviving trustee of a Will cannot by his own Will appoint (besides general executors) a special executor for the purpose of carrying on the trusts of the first Will, so as to make such special executor the personal representative of the first testator for the purpose of the statutory power: *Re Parker* [1894], 1 Ch. 707; 63 L. J. Ch. 316. But a tenant for life of settled land can appoint the S. L. Act trustees to be his special executors as respects such land, and in default of such an appointment, he will be deemed to have done so: Ad. of E. Act, 1925, s. 22.

Special executors o settled land.

Trustee becoming bankrupt or lunatic.

The statutory power can be exercised in case of the bankruptcy (*o*) or lunacy (*p*) of a trustee. But where a lunatic trustee is entitled in possession to some beneficial interest in the trust property, a new trustee cannot be appointed in his place under T. Act, 1925, s. 36, without the leave of the Judge or Master in Lunacy: *ib.*, sub-s. (9). For instance, under L. P. Act, 1925, s. 19 (2), or 1st Sch., Pt. III, para. 2, his beneficial legal estate might have become vested in other persons who were antagonistic. A purchaser, however, will be protected if the appointment states that the lunatic was "not entitled to a beneficial interest in the trust property in possession": T. Act, 1925, s. 38 (1).

Appointment in place of lunatic beneficiary.

Bodies Corporate (Joint Tenancy) Act, 1899.

Under the Bodies Corporate (Joint Tenancy) Act, 1899, a corporate body can be appointed to act jointly with an individual: *Re Thompson* [1905], 1 Ch. 229; 74 L. J. Ch. 133. The court has power to authorise a trust corporation to charge for its services when the appointment is made by the court: T. Act, 1925, s. 42.

Expense of appointments.

The expense of the appointment of new trustees must generally be borne by the trust estate: see Lewin, 12th ed., 831.

Power for court to appoint new trustees.

Whenever it is expedient to appoint a new trustee, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the court, the court may, under the T. Act, 1925, s. 41, make an order for the appointment of a new trustee

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on the doctrine that the donee of a power could not derogate from his own grant, *i.e.*, might not take away what he had already granted (*Alexander* v. *Mills* (1870), L. R. 6 Ch. 124; 40 L. J. Ch. 73), and never applied to a power of appointing new trustees: *Hardaker* v. *Moorhouse* (1884), 26 Ch. D. 417; 53 L. J. Ch. 713; *cf. Re Bedingfeld & Herring* [1893], 2 Ch. 332, 337. Now a tenant for life, so far as regards a purchaser of the settled land, has not got to show that the assignee of the life interest has consented to the exercise of any of the statutory powers: S. L. Act, 1925, s. 104.

(*o*) *Re Roche* (1842), 2 Dr. & W. 287; *Re Hopkins* (1881), 19 Ch. D. 61.

(*p*) *Re Lemann* (1883), 22 Ch. D. 633; 52 L. J. Ch. 560; and see *Re M.* [1899], 1 Ch. 79; 68 L. J. Ch. 86.

or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee, and may (ss. 44 to 56) make any orders vesting property subject to the trust in the trustees: *Re Albert Road, Norwood* [1916], 1 Ch. 289; 85 L. J. Ch. 187. A vesting order can now be made (ss. 44 and 51), whether or not the new trustee is appointed by the court. An administrator who has cleared the intestate's estate becomes a trustee of the residue, and the court may appoint another trustee to act with him: *Re Ponder* [1921], 2 Ch. 59; 90 L. J. Ch. 426; *cf. Pollock* v. *Ennis* (1921), 1 Ir. R. 181.

S. L. Act trustees.

As regards settled land, the court has power to appoint trustees for the purposes of the S. L. Act, whenever there are no such trustees, or it is otherwise expedient that new trustees should be appointed: S. L. Act, 1925, s. 34. Where a trust corporation is appointed sole trustee, capital money can be paid to it: *ib.*, ss. 94, 95.(*q*)

Trustees of compound settlements.

Having regard to S. L. Act, 1925, ss. 30 to 33, and to the amendment of s. 31 (L. P. (Amend.) Act, 1926, Sch.), under which, if there are no S. L. Act trustees of the prior instrument, the trustees of the instrument creating the life interest will (until a new appointment is made) be the trustees of the compound settlement, it will seldom be necessary to apply to the court for the appointment of trustees.

Where the trust property is being administered in court power remains exercisable subject to supervision of court.

Where there is an administration action, the order does not take away the power to appoint new trustees conferred by the instrument or by statute, but the donee can only exercise it subject to the supervision of the court; if he nominates a fit person, the court will not nominate someone else because it may prefer the latter. If the donee nominates a person whom the court does not think fit and proper, the court will not itself make the appointment, but will call on the donee to make a new one.(*r*)

Sect. VI.—*Statutory provisions for the relief of trustees.*(*s*)

Trustees enabled to pay money into court.

The T. Act, 1925, s. 63, enables trustees having in their hands or under their control money or securities to pay or transfer the

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(*q*) Under the old law this was so as regards the Public Trustee: *Re Leslie* [1911], 1 Ch. 611; 80 L. J. Ch. 486.

(*r*) *Re Gadd* (1883), 23 Ch. D. 134; 52 L. J. Ch. 396; *Re Sales* (1911), 55 Sol. J. 838. As to the effect of an order for partial administration: *Re Cotter* [1915], 1 Ch. 307; 84 L. J. Ch. 337.

(*s*) See also Sect. III of this chapter, "Management and Liabilities," *supra*.

same into court, and thus discharge themselves of their trust: 2 Wolst. & Cherry's Conv. Statutes, 11th ed. Under s. 68 the expression "securities" includes stocks, funds, and shares and, so far as relates to payment into court, has the same meaning as in Jud. Act, 1925, Pt. VI.

In what cases trustees are justified in paying money into court.

A trustee may avail himself of the above power whenever there is any reasonable doubt as to the person beneficially entitled to the fund, and will in such case be allowed the costs of the payment into court and also his costs on the application for obtaining it out of court;(*t*) but if a trustee pays the fund into court when there is no reasonable doubt as to the title of the persons claiming it, or under other circumstances which, in the opinion of the court, render such a course unnecessary and vexatious, he will not only be refused his own costs of the application by the party entitled for the payment of the fund out of court, but will also be ordered to pay the costs of the applicant;(*u*) nor will a trustee be justified in paying money into court under the Act after notice of the intention of the beneficiary to bring an action to have the accounts taken: *Re Waring* (1852), 16 Jur. 652; 21 L. J. Ch. 784.

Payment into court discouraged.

In view of the indemnities given by T. Act, 1925, ss. 26 to 30, and in particular of the extension of the power (formerly only exercisable by personal representatives) to advertise for claims, it is conceived that the court will not encourage trustees to pay money into court. The power given by Ad. of E. Act, 1925, s. 42, to appoint trustees of infants' property, will still further reduce the number of cases when money can, with propriety, be paid into court. Compensation money for land taken under compulsory powers will seldom be paid into court: L. P. Act, 1925, sub-s. 42 (7).

Where a fund was held in trust for A. for life, with remainder in trust for such person as A. should by deed or Will appoint, and in default of appointment in trust for B., and after the death of A. his solicitor wrote to the trustee that there was no ground for supposing that he ever made an appointment, it was held that the trustee ought to have been satisfied with the evidence, and was not justified in paying the money into court.(*v*)

(*t*) *Re Headington* (1858), 27 L. J. Ch. 175; *Re Bendyshe* (1857), 26 L. J. Ch. 814; *Re Jones* (1857), 3 Drew. 679; *Re Davies* (1915), 59 Sol. J. 324.

(*u*) *Re Woodburn* (1857), 1 D. & J. 333; 26 L. J. Ch. 522; *Re Cater* (1858), 25 Beav. 361; *Re Knight* (1859), 27 Beav. 45; 28 L. J. Ch. 625; *Re Elliot's Trusts* (1873), L. R. 15 Eq. 194; 42 L. J. Ch. 289.

(*v*) *Re Cull* (1875), L. R. 20 Eq. 561; 44 L. J. Ch. 664.

When money given to a married woman may be paid into court.

Formerly a trustee having in his hands money belonging absolutely to a married woman (not as her separate property) was *not* bound to pay it to her husband upon the joint request of both, but might pay it into court, so as to give her the opportunity of asserting her equity to a settlement.(*w*) But where, under the M. W. P. Act, 1882, the money is her separate property, it must be paid to her.

Policy money may be paid into court.

Money payable by an assurance company under a life policy may be paid into court if, in the opinion of the directors, no sufficient discharge can otherwise be obtained: Life Assurance, &c., Act, 1896, s. 3.

Disputed debt.

The L. P. Act, 1925, s. 136, after making an absolute assignment (see *Bowles* v. *Baker* (1910), W. N. 110) of a debt or thing in action, of which express notice has been given, effectual to pass the legal right to such debt, &c., provides that if the debtor, trustee, or other person liable in respect of such debt, &c., shall have had notice that the title to such debt, &c., is disputed, he may either call upon the parties to interplead or pay the money into court.

As to money deposited with banker.

A banking company having received notice of conflicting claims to money placed with them on deposit cannot pay such money into court; but if the money is paid in, and the person claiming it petitions for its payment out, he thereby recognises the payment, and cannot object to pay the costs incidental thereto: *Re Sutton* (1879), 12 Ch. D. 175; 48 L. J. Ch. 350.

Prior breaches of trust.

The payment of a trust fund into court does not protect the trustees from responsibility in respect of prior breaches of trust: *A.-G.* v. *Alford* (1855), 4 D. M. & G. 843.

Originating summons.

By the R. S. C., 1883, O. 55, the personal representatives of a deceased person, and the trustees under any deed or instrument, may take out an originating summons, in the Chancery Division, for the determination of any question arising in the administration of the estate or trust.(*x*)

SECT. VII.—*Devolution of trust estates and miscellaneous points relating to trustees.*

Devolution of trust estates.

Under Pt. I of the Ad. of E. Act, 1925, freehold property vested in a sole trustee devolves on his death, notwithstanding

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(*w*) *Re Swan* (1864), 2 H. & M. 34. She need not be separately examined when the money is paid out: L. P. Act, 1925, s. 167.

(*x*) If a beneficiary is out of the jurisdiction, see *Re Cliff* [1895], 2 Ch. 21; 64 L. J. Ch. 423.

any testamentary disposition, on his personal representatives in like manner and with the like incidents as if the same were a chattel real. But where a tenant for life is the trustee of the legal estate in settled land, representation, specially limited to that land, will on his death be granted to the S. L. Act trustees unless they renounce: Jud. Act, 1925, s. 162; Ad. of E. Act, 1925, s. 22; see *Re Dalley* (1926), 70 Sol. J. 839.

Where, by reason of the death, the land ceases to be settled land, and the former S. L. Act trustees have no capital money, they can be properly asked to renounce.

Devolution of powers and trusts.

Under the T. Act, 1925, s. 18, powers and trusts in respect of any property vested in two or more trustees are exercisable by the survivors and survivor of them. Until (*y*) the appointment of new trustees, they are exercisable by the personal representatives (*i.e.*, the executors, original or by representation or administrator, but not executors who have renounced or not proved: sub-s. 4) of the last surviving or of a sole trustee.

Duty of bare trustee.

If a bare trustee refuses to convey land to a beneficiary solely and absolutely entitled to the entirety when requested so to do, he will have to pay the costs of any action commenced against him to compel a conveyance.(*z*) But if there remains in the trustee any purpose unperformed for which the legal estate is vested in him, he is, subject to the exception stated in L. P. Act, 1925, s. 3 (1) (b) (ii) proviso, entitled to refuse to execute any conveyance until those purposes are fully performed. Trustees for sale are, however, bound to give effect to the directions of the persons interested in the proceeds of sale: *ib.*, ss. 3, 23, 26 (3), as amended by L. P. (Amend.) Act, 1926, Sch. Also personal representatives must not postpone making an assent merely on account of a claim for duties, &c.: Ad. of E. Act, 1925, s. 36 (10), and in the meantime should give possession to the beneficiary: *ib.*, s. 43.

Power for court to make vesting orders.

Wider powers are now given by T. Act, 1925, ss. 44 to 56, to the court to make orders vesting the land or the right to transfer or call for a transfer of the stock or appointing some person to make such conveyance or transfer.(*a*) The effect of vesting orders in relation to a legal estate in land is stated in L. P. Act, 1925, s. 9. A vesting order operating as a disentailing assurance

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(*y*) This section confirms *Re Routledge* [1909], 1 Ch. 280; 78 L. J. Ch. 136; and see article 56 Sol. J. 303.

(*z*) *Willis* v. *Hiscox* (1838), 4 My. & Cr. 197; *Buttanshaw* v. *Martin* (1859), Johns. 89.

(*a*) 2 Wolst. & Cherry, 11th ed.; *Re Dehaynin* [1910], 1 Ch. 223; 79 L. J. Ch. 131.

need no longer be enrolled: *ib.*, s. 133. A vesting order may be made when an incumbrance is discharged by payment into court: *ib.*, s. 50 (2). It can be made at the instance of an equitable mortgagee: *ib.*, ss. 90, 91. Also on the dissolution of a corporation: *ib.*, s. 181. And by way of relief against forfeiture in favour of an underlessee, including a chargee by way of legal mortgage: *ib.*, s. 146 (4).

As to Title Deeds.

Right of trustees to retain title deeds.

Right of beneficiaries to inspect.

Trustees, other than bare trustees, but including tenants for life and statutory owners who have now become the trustees of the legal estate in settled land, have the right to retain title deeds which have been delivered to them by the settlor or have otherwise come into their hands,(*b*) but the beneficiaries have a right to inspect and take copies at any time: *Ex p. Holdsworth* (1838), 4 Bing. N. C. 386; 7 L. J. C. P. 225. This extends to a person interested in the proceeds of sale, in the absence of special circumstances: *Re Cowin* (1886), 33 Ch. D. 179; 56 L. J. Ch. 78; indeed a right to proceeds of sale is now treated as an "equitable interest" in land: L. P. Act, 1925, s. 205 (1) (x). Even under the old law a legal tenant for life had a right to the custody of the deeds, unless he had been guilty of misconduct so that the safety of the deeds was endangered, or there was a pending action relating to the property, and it was more convenient for the purposes of the action that they should be in court.(*c*)

Tenant for life.

Tenants for life and statutory owners, as holding the legal estate in settled land, are entitled to the documents relating to the title of the legal estate. The S. L. Act trustees are not liable in any way on account of any vesting instrument or other documents of title relating to the settled land (other than securities for capital money) being placed in the possession of the tenant for life or statutory owner; but in certain cases they must, before they deliver the documents to him, endorse notice of the principal vesting instrument on one of the documents of title: S. L. Act, 1925, s. 98 (3).

Protection of S. L. Act trustees.

Endorsement of notice of vesting instrument.

Where a tenant for life has parted with his beneficial interest and an order is made under s. 24, the court may order that the

Tenant for life parting with interest.

(*b*) *Garner* v. *Hannyngton* (1856), 22 Beav., at p. 630; *Stanford* v. *Roberts* (1871), L. R. 6 Ch. 307.

(*c*) *Leathes* v. *L.* (1877), 5 Ch. D. 221; 46 L. J. Ch. 562; *Re Beddoe* [1893], 1 Ch. 547; 62 L. J. Ch. 233.

documents be handed over to the S. L. Act trustees, who will thenceforth exercise the powers in his name: *ib.*, s. 24 (1).

Personal representatives.

Where, pending an assent, the legal estate in the settled land is vested in personal representatives, they will be entitled to the deeds.

Rights of remainderman.

Any person entitled to a *vested* remainder may require the tenant for life to produce the title deeds for the remainderman's inspection, in order to enable him to dispose of or otherwise deal with his interest in the property.(*d*) It has been held that this right did not extend to a person entitled to a contingent remainder: *Noel* v. *Ward* (1816), 1 Madd. 322; it is conceived that this decision would not be followed at the present day, though every remainderman can only have an equitable interest. Under the old law an equitable tenant for life in possession to whom the deeds had been delivered might retain them as against the trustees: *Taylor* v. *Sparrow* (1863), 4 Giff. 703; as between an equitable tenant for life and the trustees, the court would, as a general rule, for the purpose of enabling him to exercise his statutory powers, order the deeds, including appointments of new trustees, to be delivered to the former on his undertaking not to part with them without the consent of the trustees, and to produce them upon all reasonable occasions.(*e*) After 1925 such an undertaking will not be required. The result, in practice, was that the tenant for life of land, whether legal or equitable, obtained the custody of the deeds without any application to the court, and where they were held by solicitors who acted for both parties the deeds are treated as being in the legal custody of the tenant for life. The guardians of an infant tenant for life were the proper persons to keep the title deeds,(*f*) but after 1925 the deeds must be given either to the personal representatives or to the S. L. Act trustees in whom the legal estate may be vested: S. L. Act, 1925, s. 26; see also s. 23 if the infant only has a defeasible or contingent interest.

Equitable tenant for life entitled to custody of deeds on terms under the old law.

Minority.

Trustee could not require co-trustee to place certain deeds at bank.

Unless there were special circumstances, a trustee was not entitled to have title deeds and non-negotiable securities removed

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(*d*) *Davis* v. *Earl of Dysart* (1855), 20 Beav. 405; 24 L. J. Ch. 381; *Pennell* v. *Earl of Dysart* (1859), 27 Beav. 542.

(*e*) *Re Burnaby* (1889), 42 Ch. D. 621; 58 L. J. Ch. 664; *Re Beddoe, supra*; *Re Wythes* [1893], 2 Ch. 369; 62 L. J. Ch. 663; *Re Newen* [1894], 2 Ch. 297; 63 L. J. Ch. 763; *Re Richardson* [1900], 2 Ch. 778; 69 L. J. Ch. 804.

(*f*) *Re Lethbridge* (1917), W. N. 243, unless S. L. Act trustees or other persons had been authorised during the minority to exercise the statutory powers.

from the custody of a co-trustee and deposited at a bank: *Re Sisson* [1903], 1 Ch. 262; 72 L. J. Ch. 212; but all bearer securities must be placed at a bank: T. Act, 1925, ss. 7, 68 (13); and trustees now have power to deposit documents at a bank, &c., for safe custody and to pay the costs, if any, out of income.

Renewal of Lease by Trustee or Tenant for Life.

Renewal of lease by trustee or tenant for life enures for the benefit of the trust.

If a trustee accepts a renewal of a lease, whether or not by virtue of a right of renewal,(*g*) he must hold the new lease for the benefit of the trust. For this purpose it is considered as engrafted on and as forming part of the old lease; the rule applies to every person who in respect of the old lease occupies some special position by virtue whereof he owes a duty to the other persons interested, *e.g.*, a tenant for life, or a partner, or a mortgagee.(*h*) But if, in the case of a lease to which no right of renewal is attached, the person renewing is in no sense in a fiduciary position, but is merely one of two or more persons interested in the old lease, the rule does not apply: *Re Biss* [1903], 2 Ch. 40; 72 L. J. Ch. 473.

How far doctrine applies to purchase of reversion.

The doctrine that a renewal of leaseholds by a tenant for life enures for the benefit of the settled estate sometimes applies to a purchase of the freehold reversion.(*i*) It only applied to leaseholds which were renewable by custom or contract. If the trustee of a lease which is not thus renewable buys the reversion he may, in the absence of fraud, hold it for his own benefit: *Bevan* v. *Webb* [1905], 1 Ch. 620; 74 L. J. Ch. 300.

Abolition of perpetually renewable leases.

This matter has ceased to be of any importance where the lease was perpetually renewable, for it is now converted either into a fee simple (if it belonged to a copyholder) or into a long term: L. P. Act, 1922, s. 145, 15th Sch.; 1 Wolst. & Cherry, 11th ed., 52, 89–106.

Acceptance of leases.

(*g*) For restrictions on the right of renewal: L. P. Act, 1922, 15th Sch., paras. 5–8. For power to grant a lease by way of renewal: S. L. Act, 1925, s. 43 (i). A tenant for life has power to accept a lease: S. L. Act, 1925, s. 53, hence trustees for sale and personal representatives can do so also: L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

(*h*) *Taster* v. *Marriott* (1768), Amb. 668; *Rawe* v. *Chichester*, *ib.*, 715; *Edwards* v. *Lewis* (1747), 3 Atk. 538; *James* v. *Dean* (1805), 11 Ves. 383; *Rakestraw* v. *Brewer* (1728), 2 P. Wms. 511; *cf. Griffith* v. *Owen* [1907], 1 Ch. 195; 76 L. J. Ch. 92.

(*i*) *Re Lord Ranelagh* (1884), 26 Ch. D. 590; 53 L. J. Ch. 689; *Leigh* v. *Burnett* (1885), 29 Ch. D. 231; 54 L. J. Ch. 757; *Phillips* v. *P.* (1885), 29 Ch. D. 673; 54 L. J. Ch. 943; *Griffith* v. *Owen*, *supra.*

Constructive trustee entitled to be recouped expenditure.

If a tenant for life or other person has purchased land under circumstances which make him a constructive trustee, he is entitled to be recouped any expenditure incurred by him in improvements: *Rowley* v. *Ginnever* [1897], 2 Ch. 503; 66 L. J. Ch. 669.

Trustees' Costs.

Trustee cannot charge for professional services.

It is an established rule that, apart from express directions, a trustee or personal representative shall have no allowance for his care and trouble: *Robinson* v. *Pett* (1734), 3 P. Wms. 249; hence a trustee who is a solicitor is only entitled to be repaid costs out of pocket, he cannot charge the trust estate for his professional services.(*j*) The rule equally applies where the trustee is a member of a firm of solicitors, and the business is done by the firm;(*k*) and it applies to all professional persons, and not to solicitors only: *Matthison* v. *Clarke* (1854), 3 Drew. 3; 24 L. J. Ch. 202. It does not, however, apply to the Public Trustee, and the court has power, when appointing a trust corporation, to authorise the trust corporation to charge: T. Act, 1925, s. 42.

Solicitor trustee preparing a lease must account to trust estate for costs received from lessee.

In accordance with the above rule, if a solicitor trustee and his firm make profit costs by preparing leases, which costs are paid by the tenants, the solicitor must account to the trust estate for the costs thus received: *Re Corsellis* (1887), 34 Ch. D. 675; 56 L. J. Ch. 294.

Solicitor trustee may employ partner, if the latter takes the whole profit.

But a solicitor trustee may employ his partner to act in any business relating to the trust, and may pay him the usual charges, provided that it has been expressly agreed between them that the partner so employed shall take the whole profit.(*l*)

Exception to general rule established by *Cradock* v. *Piper*, applies only to proceedings in Court.

An exception to the general rule that a solicitor trustee is only entitled to costs out of pocket has been established by the case of *Cradock* v. *Piper*: (1850), 1 Mac. & G. 664; 19 L. J. Ch. 107; see *Re Corsellis, supra*; where it was decided that when a solicitor or his firm appears in an action on behalf of himself and a co-trustee, and the expense is not thereby increased, then

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(*j*) *Moore* v. *Frowd* (1836), 3 My. & Cr. 45; 6 L. J. Ch. 372; *Pollard* v. *Doyle* (1860), 1 Dr. & Sm. 319; *Re Barber* (1887), 34 Ch. D. 77; 56 L. J. Ch. 216.

(*k*) *Christophers* v. *White* (1847), 10 Beav. 523; *Lincoln* v. *Windsor* (1851), 9 Hare, 158; 20 L. J. Ch. 531; *Broughton* v. *B.* (1855), 5 D. M. & G. 160; 25 L. J. Ch. 250.

(*l*) *Clack* v. *Carlon* (1861), 30 L. J. Ch. 639; see also *Re Doody* [1893], 1 Ch. 129; 62 L. J. Ch. 14.

the solicitor or his firm is entitled to the usual costs. The exception is an anomaly, and was not extended to a solicitor mortgagee: *Re Doody* [1893], 1 Ch. 129; *Re Roberts* [1890], 43 Ch. D. 52; 59 L. J. Ch. 25.

Costs of solicitor mortgagee.

However, under the Mortgagees' Legal Costs Act, 1895, a solicitor mortgagee may, as regards mortgages made after June, 1895,(*m*) charge the usual remuneration for investigation of title and the preparation and completion of the mortgage; and, as regards all business transacted either before or after that date in relation to the security, may charge against the security the usual remuneration, except where costs have been disallowed and the time for appeal has passed.

Effect of clause authorising trustee to charge for professional services.

If the settlor merely authorises a trustee to retain his professional costs, he will be allowed to charge for everything which, if he had not been a solicitor, he would have been justified in employing a solicitor to do; he will not be allowed his charges for things which a trustee or personal representative ought to do without the intervention of a solicitor, such as for attendances to pay premiums on policies, attendances at the bank to make transfers, attendances on proctors, auctioneers, legatees, and creditors.(*n*)

Costs of collecting rents.

Apart from express agreement, solicitors are not entitled to charge a gross sum for collecting the rents of the trust estate: *Re Shilson, Coode & Co.* [1904], 1 Ch. 837; 73 L. J. Ch. 541.

Power to employ agents, &c.

But though no general power has been given for a professional trustee to charge, general powers have been conferred to employ and pay agents, and to delegate trusts during absence abroad: T. Act, 1925, ss. 23 and 25, as amended by L. P. (Amend.) Act, 1926, Sch.

New Supplementary Powers.

Attention should also be called to certain supplementary powers, not previously referred to.

Power to lend for term certain.

Trustees (including personal representatives) may contract not to call in money lent by them for a term not exceeding seven years, provided that the requirements of T. Act, 1925, s. 10 (1), are complied with.

(*m*) See *Eyre* v. *Wynn-Mackenzie* [1896], 1 Ch. 135; 65 L. J. Ch. 194; *Day* v. *Kelland* [1900], 2 Ch. 745; 70 L. J. Ch. 3; *Cheese* v. *Keen* [1908], 1 Ch. 245; 77 L. J. Ch. 163.

(*n*) *Harbin* v. *Darby* (1860), 28 Beav. 325; 29 L. J. Ch. 622; *Re Chalinder and Herington* [1907], 1 Ch. 58; 76 L. J. Ch. 71.

Power to lend part of proceeds of sale.

Trustees (including tenants for life and statutory owners) on a sale of a fee simple or of a term having at least 500 years to run, may leave not more than two-thirds of the purchase money on a legal mortgage of the property without taking a valuers' report: *ib.*, s. 10 (2).

Reconstruction, &c., of companies.

Trustees (including personal representatives) may concur in schemes for the reconstruction or amalgamation of companies, and accept new securities by way of exchange: *ib.*, s. 10 (3).

Allotment letters, &c.

They can deal with allotment letters and conditional or preferential rights to subscribe as authorised by *ib.*, s. 10 (4).

Reversionary interests, valuations, examination of accounts.

Special powers are given in relation to reversionary interests, the making of valuations and the examination of trust accounts by accountants by *ib.*, s. 22.

Judicial Trustees.

Judicial trustees.

The court may, on the application of any person creating or intending to create a trust or of a trustee or beneficiary, appoint a person (called a "judicial trustee") to be a trustee of that trust (and for this purpose the administration of the estate of a deceased person is to be deemed a trust), either in substitution for or in conjunction with any existing trustee or executor. Any fit person may be nominated, or the court, if not satisfied of the fitness of a person so nominated, may appoint an official of the court to be trustee. The judicial trustee acts under the direction of the court. He may receive remuneration, and his accounts are to be audited annually.(*o*)

The functions of judicial trustees are further defined by the Judicial Trustee Rules, 1897, 1899 and 1910. A person interested in an estate is not entitled as of right to the appointment of a judicial trustee, which is a matter entirely within the discretion of the court. Thus, where a reversioner under a Will applied for the appointment of a judicial trustee to act alone or jointly with the testator's widow, who was sole executrix and tenant for life, the application was refused as being against the wish of the executrix and the intention of the testator: *Re Ratcliff* [1898], 2 Ch. 352; 67 L. J. Ch. 562.

Number of personal representatives.

Under Judicature Act, 1925, s. 160 (replacing Ad. of E. Act, 1925, s. 10) representation will not be granted to more than four persons, and administration will, if a beneficiary is an infant,

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(*o*) Jud. T. Act, 1896, s. 1. See also Judicial Trustee Rules, 1897, 1899, 1910. This Act has been rarely made use of in practice.

or there is a life interest, be granted either to a trust corporation or to not less than two individuals.

Power to appoint additional executor or administrator.

The court has power to appoint an additional executor or administrator during a minority or the subsistence of a life interest where there is a sole personal representative not being a trust corporation: *ib.*, s. 160 (2).

Court not bound to appoint official, but can appoint the Public Trustee.

On the retirement of a judicial trustee the court, if not satisfied of the fitness of the person nominated by the applicant, is not bound to appoint an official, but may appoint a person suggested by the retiring trustee as his successor: *Douglas* v. *Bolam* [1900], 2 Ch. 749; 70 L. J. Ch. 1. The Court can appoint another person, including the Public Trustee, on the retirement of a judicial trustee: *Re Johnston* (1911), 105 L. T. 701.

The Public Trustee.

The Public Trustee.

By the Public Trustee Act, 1906, which came into operation in 1908, it was enacted:—

Establishment of the office.

S. 1. (1) There shall be established the office of public trustee.

(2) The public trustee shall be a corporation sole under that name with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole, but any instrument sealed by him shall not by reason of his using a seal be rendered liable to a higher stamp duty than if he were an individual.

The Public Trustee Rules, 1907, r. 3, definitely established the office: For these rules, see (1907), W. N. 329.

The Rules.

The Rules of 1907 have now been rescinded by the Rules of 1912: For these rules, see (1912), W. N. 173; and see 56 Sol. J. 299; and references to the Rules in this note mean the Rules of 1912, which came into operation on the 15th April, 1912, as varied by the Rules of 1925.

Deputies.

Rule 4 provides for the appointment of deputy public trustees (see also rr. 42 and 43).

Trust property.

The Public Trustee can hold trust property, whatever its nature may be: *Re Leslie* [1911], 1 Ch. 611; 80 L. J. Ch. 486; but as to the management and carrying on of businesses, see s. 2 (4) and r. 7.

Where the Public Trustee may act.

Section 2 (1) of the Act gives the Public Trustee a discretionary power to accept trusts and act:—

Small estates.

(a) In the administration of estates of small (*p*) value (see s. 3 and rr. 12–15).

(*p*) The value must be taken at the date of the application to the Public Trustee to act, not at the testator's death: *Re Devereux* [1911], 2 Ch. 545; 80 L. J. Ch. 705.

Custodian trustee.

(b) As custodian trustee. Under s. 4, where the Public Trustee accepts the office of custodian trustee, the property is to be vested in him, while the trustees appointed under the trust remain as managers. Rule 30 provided for the appointment of banking and other corporations as custodian trustees (*q*) provided that they did not represent that any liability attached to the Public Trustee or to Government funds. This rule has now been superseded by r. 1 of the Rules of 1925. It becomes of importance because bodies authorised to act as "custodian trustees" under the new rule are also capable of acting as "trust corporations": L. P. Act, 1925, s. 205 (1) (xxviii); S. L. Act, 1925, s. 117 (1) (xxx); Ad. of E. Act, 1925, s. 55 (1) (xxvi); T. Act, 1925, s. 68 (18); Jud. Act, 1925, s. 175 (1). The meaning of "trust corporation" has been extended by L. P. (Amend.) Act, 1926, s. 3, but the additional bodies there referred to are not authorised to act as custodian trustees.

Ordinary trustee.

(c) As an ordinary trustee (see s. 5).

Judicial trustee.

(d) As judicial trustee: see *Re Johnston* (1911), 105 L. T. 701.

As administrator of convict.

(e) As administrator of the property of a convict under the Forfeiture Act, 1870.

Extension of powers by the Rules.

These powers are pursuant to the provisions of the Act, defined and, to an extent, extended by r. 6, under which the Public Trustee may accept:—

(a) Any trust created or declared by any trust instrument.

(b) As incident to a trust, the guardianship of an infant beneficiary or the office of agent or attorney.

(c) Probate or letters of administration of any kind and either as principal or agent. As administrator he is not required to give the usual bond (s. 11 (4)): *In b. Woolley* (1911), 55 Sol. J. 220.

(d) As custodian trustee, any trust created or declared by any trust instrument.

(e) Money or damages recovered or awarded on behalf of an infant may be paid to the Public Trustee under the R. S. C., Ord. 22, r. 15.

Appointment of the Public Trustee.

The Public Trustee may be appointed:—

(1) An administrator of small estates under £1,000 (*r*) in value on the application of any person who, in the opinion of the Public Trustee, would be entitled to apply for an administration order: s. 3 (1).

(*q*) See also 54 Sol. J. 735; *Re Cherry* [1914], 1 Ch. 83; 83 L. J. Ch. 142.

(*r*) *I.e.*, under £1,000 at the date of the application to the Public Trustee to act and not at the testator's death: *Re Devereux* [1911], 2 Ch. 545; 80 L. J. Ch. 705.

(2) As custodian trustee by (a) an order of the court made on the application of any person entitled to apply to the court for the appointment of a new trustee, (b) the testator, settlor, or other creator of any trust, or (c) the person having power to appoint new trustees : s. 4 (1).

Power to act as sole trustee.

(3) As ordinary trustee in the same manner and by the same persons or the court as if he were a private trustee : s. 5 (1). He may be appointed sole trustee, though the number of the original trustees may have been two or more : s. 5 (1), and was appointed sole trustee by the court in *Re Leslie* [1911], 1 Ch. 611 ; 80 L. J. Ch. 486, where the trust instrument provided that the number of trustees should not be reduced below three. In the same case Eve, J., stated : " It seems to me that in all cases to which the statutory power of appointing new trustees is applicable, that is to say, in all cases where the donee of the power can either appoint under s. 10 of the Act of 1893 [now T. Act, 1925, s. 36] or under the combined effect of that section and s. 5 of the Public Trustee Act, 1906, the settlement must be read as authorising the payment—in the event of the Public Trustee being appointed —of capital money to a sole trustee and as intending the giving to a sole trustee of notice." As being a " trust corporation " the Public Trustee can give receipts as a sole trustee for sale : L. P. Act, 1925, s. 27 (2), as amended ; and as a sole S. L. Act trustee can give receipts and accept notices : S. L. Act, 1925, ss. 94, 95, 101. Upon the appointment of the Public Trustee a co-trustee may retire under the T. Act, 1925, s. 39, notwithstanding that there are not more than two trustees and without the consents required by that section : Public Trustee Act, 1906, s. 5. Further, after 1925, if any trust corporation is acting, the other trustees can be discharged under T. Act, 1925, s. 39, independently of the Public Trustee Act, 1906.

Power for other trustees to retire.

When order of court required.

Apart from an order of the court the Public Trustee cannot be appointed trustee of an instrument which prohibits his appointment : s. 5 (3). Notice of the proposed appointment of the Public Trustee must be given to the beneficiaries who can apply to the court to prohibit the appointment : s. 5 (4). Retiring trustees have been authorised by the court to appoint the Public Trustee notwithstanding an objection raised by one beneficiary.(*s*)

Notices to beneficiaries.

(*s*) *Re Firth* [1912], 1 Ch. 806 ; and see *Re Kensit* (1908), W. N. 235 ; *Re Claremont* (unreported), Annual Practice, p. 2305. The report of *Re Hope-Johnstone* (1909), 53 Sol. J. 321, is erroneous. No order was made, as

Public Trustee may act jointly with other trustees or alone.

The Public Trustee may act jointly with other trustees or alone, and is in the same position as regards powers, duties and liabilities and the control of the court as a private trustee: s. 2 (2). As a general rule it is better that he should act alone; it saves costs. He is in no different position so far as regards binding his beneficiaries from that of a private trustee.(*t*)

Applications to Public Trustee.

Applications to the Public Trustee should be made to his London office in Kingsway, or to a branch office, *e.g.*, in Manchester: r. 40.

Consent of Public Trustee to act.

Rule 8 enables a testator to appoint the Public Trustee to be trustee or custodian trustee of a Will without his previous consent, but the appointment does not take effect until the Public Trustee consents to act. It is, however, generally expedient to submit a draft of the Will to the Public Trustee, of which he is to act as executor, in case he may have suggestions to make thereon. The same rule makes it obligatory, where a co-trustee appointed by Will to act with the Public Trustee accepts office, upon such co-trustee to give notice of such appointment as soon as practicable to the Public Trustee. Except in the case of Wills no appointment of the Public Trustee can be made until his consent (*u*) has been obtained: r. 8 (2).

Production of documents.

Upon receiving an application to act as trustee or custodian trustee the Public Trustee can require the production of the trust instrument and such other particulars as he may think desirable: r. 9. If, after taking into consideration the matters mentioned in r. 10, he decides to act, he must accept the office in writing under his hand and official seal: r. 10.

Charitable trusts.

The Public Trustee is not bound to accept a trust, but he cannot refuse only on the ground of the small value of the trust property: s. 2 (3). He may not accept a trust exclusively for a religious or charitable purpose: s. 2 (5).(*v*)

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the trustees who had desired to retire agreed to continue to act. There were special circumstances in that case, the settlement having been made to protect the settlor, and there were wide discretionary trusts. Hence, the judge's remarks to the effect that members of the family, cognisant of all the circumstances, would be better able to carry out the trusts than a public official to whom it would be difficult to explain all the facts.

(*t*) *Re New Haw Estate* (1912), 56 Sol. J. 538; *Re Moxon* [1916], 2 Ch. 595; 86 L. J. Ch. 33.

(*u*) *Re Shaw* (1913), 58 Sol. J. 154, 414.

(*v*) *Re Hampton* [1918], 88 L. J. Ch. 103; see also *Re Cherry* [1914], 1 Ch. 83; 83 L. J. Ch. 142.

Foreign settlements.

The Public Trustee may not become trustee of any foreign settlement.(*w*)

General provisions.

Rules 16–29 contain general provisions as to the administration of trusts and estates.

Investigation and audit of trust accounts.

Provisions for the investigation and audit of trust accounts not under the jurisdiction of the Public Trustee are contained in s. 13 and rr. 31–37 ; see also T. Act, 1925, s. 22.

The application must be made to the Public Trustee (r. 31), who may require a deposit to be paid to cover costs (r. 32 (1)). Any trustee or beneficiary may apply, and the auditor must be a solicitor or public accountant agreed upon by the beneficiary and trustees, or, in default of agreement, the Public Trustee or some person appointed by him, but a beneficiary or trustee is not eligible : s. 13. The notices mentioned in r. 31 must be given. The applicants may be required to pay the costs of the audit : *Re Utley* (1912), 56 Sol. J. 518.

Appeals.

Where the Public Trustee makes an order in his judicial capacity, the parties have the right to appeal : s. 10 ; even as to costs of an audit : *Re Oddy* [1911], 1 Ch. 532 ; 80 L. J. Ch. 404.

Fees.

The general fees chargeable by the Public Trustee are prescribed by s. 9 and the Public Trustee (Fees) Order, 1925.(*x*)

The income fee payable in respect of life annuities, prescribed by r. 1, is payable out of those annuities and not out of residue : *Re Bentley* [1914], 2 Ch. 456 ; 84 L. J. Ch. 54.

The special fees (reduced scale) payable in respect of trusts, where, under the L. P. Act, 1925, 1st Sch., or S. L. Act, 1925, 2nd Sch., para. 3, land vests in him, are prescribed by the Public Trustee (Fees) Order, 1925. He can act as trustee when so requested, unless other trustees are appointed in his place.

State guarantee in respect of the Public Trustee and the position of his co-trustees.

Section 7 supplies a limited State guarantee against loss where the Public Trustee acts. It does not extend to persons acting in conjunction with the Public Trustee, and, as has been pointed out in 54 Sol. J. 261, 267, such persons are not expressly protected against loss occasioned by the acts or defaults of the Public Trustee and may remain liable to their beneficiaries to make good such loss. They may also possibly be in the unenviable position of being called upon by the Public Trustee to contribute towards the amount payable under the State guarantee.

(*w*) *Re Hewitt* [1915], 1 Ch. 228 ; 84 L. J. Ch. 358 (Scottish Will).

(*x*) See Stat. R. & O., 1925, No. 1269/L47 ; 1926, W. N. 32, rescinding the Orders of 1917–1923.

It seems more probable that if the co-trustee takes no active part in the breach of trust the court would treat the Public Trustee as being on the same footing as if he were a solicitor trustee.

New rules. The Public Trustee Rules, 1925, were made to meet the case of land which became automatically vested in the Public Trustee by virtue of the vesting provisions in L. P. Act, 1925, 1st Sch., and S. L. Act, 1925, 2nd Sch., para. 3.

CHAPTER II.

THE LAW OF HUSBAND AND WIFE AS REGARDS THE WIFE'S PROPERTY AND CONTRACTS.

SECT. I.—*The interest of a husband in his wife's property not within the M. W. P. Acts or given for her separate use.*

Real estate.

BY the common law the husband was entitled to the rents and profits of his wife's real estate during their joint lives. He was also entitled, if he survived his wife, and there had been issue born alive of the marriage, to an interest during his life called an estate by the curtesy, in any freehold property to which the wife was entitled in possession at any time during the coverture, for an estate of inheritance descendable to such issue. Such an estate still gives the tenant the powers of a tenant for life: S. L. Act, 1925, s. 20.

Abolition of estate by the curtesy.

Exceptions.

Subject to the exceptions below, estates by the curtesy have been abolished as to deaths after 1925 by L. P. Act, 1922, 12th Sch. (1) (d), as to enfranchised land, and by Ad. of E. Act, 1925, s. 45, as to land generally. But the husband of a wife entitled to an estate tail may still take an equitable interest by the curtesy under L. P. Act, 1925, s. 130; and if the wife was a lunatic and of full age on 1st January, 1926, and dies without having recovered her testamentary capacity, the husband may still become entitled in equity to an estate by the curtesy under Ad. of E. Act, 1925, s. 51 (2).

Conveyance by deed unacknowledged.

The husband and wife together can dispose of her freehold lands by deed, but it is no longer necessary that the deed should be acknowledged by her: L. P. Act, 1925, s. 167.

On what property curtesy attached under the old law.

Undivided shares.

The following points with respect to curtesy were settled:

(1) Curtsey attached to an undivided share of land held in coparcenary, or in common (land cannot be held in undivided shares after 1925), but not to land held in joint tenancy, nor to a reversion or remainder which did not fall into possession during the coverture: Co. Litt. 29.

Intervening estates.

(2) Where contingent remainders intervened between a limitation to a wife for life and a reversion to her in fee, the right of curtesy existed until the contingency happened: *Boothby* v. *Vernon* (1725), 9 Mod. 147.

(3) Curtesy attached to a right of redemption: *Casborne* v. *Scarfe* (1737), 1 Atk. 603; and to money directed to be laid out in the purchase of land: *Cunningham* v. *Moody* (1748), 1 Ves. Sen. 174; and to an equitable estate: *Watts* v. *Ball* (1758), 1 P. Wms. 108.

Right of redemption; capital money.

(4) Curtesy attached to land belonging to the wife for her separate use, if and so far as it was not disposed of by the wife in her lifetime or by her Will,(*a*) even where she took under a devise which took effect after her death under the Wills Act, 1837, s. 33.(*b*)

Separate property.

(5) Curtesy still attaches to land of which the wife is tenant in tail, provided that a child is born capable of taking under the entail, though the wife may eventually die without issue.

Estate tail.

(6) It also attached to land in which the wife had an estate of inheritance subject to an executory limitation over, provided that a child was born, and the wife's estate was such as, notwithstanding the executory limitation, might have descended to such child. Thus in a case where an estate was devised to a woman in fee, with an executory limitation over in case she died under twenty-one and without leaving issue; the devisee had a child, who died, then the mother died under twenty-one, and it was held that the husband was tenant by the curtesy.(*c*) But where there was a devise to A. in fee, and if she died leaving issue then to such issue, it was held that as the issue took as purchasers, and could not have taken by descent, there was no curtesy.(*d*)

Defeasible estate.

There was no curtesy in copyholds except by special custom: Gilb. Ten. 206.

Copyholds.

By the common law the husband was entitled to the rents and profits of his wife's chattels real during their joint lives, and he had an absolute power to dispose of them either voluntarily or for a valuable consideration, by act *inter vivos*; this power extended to reversionary and contingent interests, unless the interest was of such a nature that it could not possibly vest in the wife in possession during the coverture: *Duberley* v. *Day* (1852), 16 Beav. 33; 22 L. J. Ch. 99; but so far as this power

Husband's interest in chattels real of wife under old law.

(*a*) *Cooper* v. *Macdonald* (1878), 7 Ch. D. 288; 47 L. J. Ch. 373.

(*b*) *Eager* v. *Furnivall* (1881), 17 Ch. D. 115; 50 L. J. Ch. 537; *Re Derbyshire* [1906], 75 L. J. Ch. 95.

(*c*) *Buckworth* v. *Thirkell* (1804), 3 Bos. & Pull. 652, n.; see also *Moody* v. *King* (1825), 2 Bing. 447.

(*d*) *Barker* v. *B.* (1828), 2 Sim. 249; see also *Sumner* v. *Partridge* (1740), 2 Atk. 47.

was not exercised by a complete act during the coverture, they went to the survivor, without administration.(*e*) As a general rule on a devolution on death after 1925, save as between joint tenants, representation should be taken out as regards any interest in land: Ad. of E. Act, 1925, s. 53 (2): see *Re Dalley* (1926), 70 Sol. J. 839.

Chattels personal and paraphernalia, old law.

By the common law the chattels personal of a wife belonged absolutely to the husband, so far as he obtained possession of them during the coverture. The wife's paraphernalia, viz., her wearing apparel and ornaments suitable to her condition in life, were a partial exception to this rule. These passed to the wife if she survived, but she could not give them away in her lifetime. The husband might dispose of them (except wearing apparel) (*f*) by an act *inter vivos*, but not by Will, and they were subject to his debts: 2 Steph. Com. 287.

Things in action, old law.

By the common law the husband acquired an absolute interest in his wife's things in action (which included debts owing to her, arrears of rent, legacies, reversionary interests in stocks, shares,(*g*) and other personal property not in possession), so far as they were reduced by him into possession during the coverture, but not otherwise. An assignment by the husband, even if made for a valuable consideration, of a reversionary interest in personalty or other thing in action of the wife, was void against her, if she survived him, unless he or his assignee had reduced it into possession.(*h*)

Wife's equity to a settlement.

The court would at any time before a thing in action of a married woman was paid, or transferred by a trustee in whose hands it was, oblige the husband to make a reasonable provision out of it for the wife and children. This right of the wife was called her equity to a settlement.(*i*) If money is in court it is no longer necessary before it is paid out that the married woman should be separately examined: L. P. Act, 1925, s. 167.

Statutory power to

Under the F. & R. Act, 1833, and the Married Women's Reversionary Interests Act, 1857 (*Malins' Act*), the husband and

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(*e*) See *Re Bellamy* (1883), 25 Ch. D. 620; 53 L. J. Ch. 174.

(*f*) See *Masson, &c., & Co.* v. *De Fries* [1909], 2 K. B. 831; 79 L. J. K. B. 24, where Farwell, L.J., says that the exception in regard to paraphernalia no longer existed when the husband's common law rights had been destroyed.

(*g*) *Colonial Bank* v. *Whinney* (1887), 11 A. C. 426; 56 L. J. Ch. 43.

(*h*) *Purdew* v. *Jackson* (1824), 1 Russ. 1; 4 L. J. (O. S.) Ch. 1; *Hutchings* v. *Smith* (1838), 9 Sim. 137; 7 L. J. Ch. 128.

(*i*) The cases as to reduction into possession and the wife's equity to a settlement have been rendered obsolete by the M. W. P. Act, 1882, as regards any reversionary interest or thing in action accruing to a married woman after 1882.

wife might, by a deed acknowledged by the latter, dispose of a reversionary interest in money charged on land, including money properly invested by her trustees on mortgage of land: *Miller* v. *Collins* [1896], 1 Ch. 573; 65 L. J. Ch. 353; or in money to arise from the sale of land impressed with a trust for sale,(*j*) and might also dispose of a reversionary interest and release the wife's equity to a settlement in or out of any personal estate to which the wife had become entitled under any instrument made after 1857 (except such interest in personal estate as might have been settled on her by any settlement, or agreement for a settlement, made on her marriage, and except also any interest which by the terms of the instrument she was restrained from alienating). These powers still hold good, but may be exercised without the deed being acknowledged: L. P. Act, 1925, s. 167.

dispose by deed acknowledged.

The Act of 1857 does not apply to a reversionary interest created by a Will made before 1857, and followed by a codicil made after that date but not affecting that particular bequest: *Re Elcom* [1894], 1 Ch. 303; 63 L. J. Ch. 392.

Case not within the Act of 1857.

Under L. P. Act, 1925, s. 169, the court may bind the interest of a married woman which she is restrained from anticipating or is unable to dispose of under the general law, including her reversionary interest under her marriage settlement; the court may also impound the interest of a married woman who has in writing instigated a breach of trust, though she is restrained from anticipation: T. Act, 1925, s. 62.

Power for court to bind interest of married woman.

A married woman can by deed release a power of appointment among her children, though she has a prior life interest which she is restrained from anticipating.(*k*)

Release of power.

The marriage before 1883 of a female joint tenant severed the joint tenancy as regards any property which, by the mere act of marriage, vested in the husband, *i.e.*, personal chattels in possession, but not as regards chattels real or things in action: *Re Butler* (1888), 38 Ch. D. 286; 57 L. J. Ch. 643; or freeholds: *Palmer* v. *Rich* [1897], 1 Ch. 134; 66 L. J. Ch. 69.

Marriage, when a severance of joint tenancy.

All tenancies by entireties, if there be any, have been converted into joint tenancies: L. P. Act, 1925, 1st Sch., Pt. IV: 1 Wolst. & Cherry, 11th ed., 512; without prejudice to beneficial interests and the land will be held on trust for sale:

Tenancies by entireties.

(*j*) *Briggs* v. *Chamberlain* (1853), 11 Hare, 69; 23 L. J. Ch. 635; and see *Re Jakeman* (1883), 23 Ch. D. 344; 52 L. J. Ch. 363.

(*k*) L. P. Act, 1925, s. 155; *Re Chisholm* [1901], 2 Ch. 82; 70 L. J. Ch. 533.

Husband and wife joint tenants; trust for sale.

ib., s. 36. If a husband and wife are joint tenants beneficially entitled, the survivor can dispose of the land as if it were not subject to a trust for sale: L. P. (Amend.) Act, 1926, Sch., amending L. P. Act, 1925, s. 36. A trust for sale does not hinder dealings, not within the statutory powers, effected with the concurrence of the beneficiaries.

Treated as two persons.

For the purpose of acquiring any interest in property after 1925, husband and wife are treated as two persons: L. P. Act, 1925, s. 37: 1 Wolst. & Cherry, 11th ed., p. 191; see also Ad. of E. Act, 1925, s. 46 (2).

SECT. II.—*Trusts for the separate use of a married woman, with or without a restraint on anticipation.*

Equitable doctrine of separate use.

Equity has always recognised the right of a married woman to the separate enjoyment of property where it has been given on trust for her separate use, or where the language of the instrument has shown the intention of the donor to be that she shall enjoy it independently of her husband. Where such a trust is created, the wife can dispose of the property which is the subject of it, whether consisting of real: *Taylor* v. *Meads* (1865), 4 D. J. & S. 597; 34 L. J. Ch. 203, or personal estate, and whether belonging to her in possession or reversion, as if she were a *feme sole*, and it was never necessary that the deed of disposition should be acknowledged.

If legal estate in land given to separate use of wife was vested in her, she could convey under Trustee Act.

If land was given before 1883 to a married woman in fee simple for her separate use so that she had the legal estate as well as the equitable separate estate, *semble*, upon a sale or mortgage, she could, under s. 16 of the T. Act, 1893, have conveyed the legal estate to the purchaser or mortgagee by an unacknowledged deed: *Re Howgate and Osborn* [1902], 1 Ch. 451; 71 L. J. Ch. 279. The contract and payment of the consideration money constituted her a bare trustee for the purchaser or mortgagee, and thus brought her within the operation of the section: *Re Docwra* (1885), 29 Ch. D. 693; 54 L. J. Ch. 1121. The difficulty was that, at law, the husband would have taken a joint life estate with the wife and a possible estate by the curtesy. Now any disposition by her after 1882 would be valid under L. P. Act, 1925, s. 170, reproducing M. W. P. Act, 1907, s. 1, with amendments.

Restraint on anticipation.

A trust of the rents or income of real or personal property for the separate use of a married woman has been frequently accompanied by a clause imposing a restraint on anticipation. In that case her power is restricted to receiving the income as it becomes due, and she is, apart from the leave of the court under L. P. Act, 1925, s. 169, incompetent to make any disposition of, or to bind herself by admission : *Bateman* v. *Faber* [1898], 1 Ch. 144 ; 67 L. J. Ch. 130 ; in regard to the rents or income before they accrue due; but since M. W. P. Act, 1882, she may disclaim a legacy or other gift of personalty even though it is subject to a restraint on anticipation : *Re Wimperis* [1914], 1 Ch. 502 ; 83 L. J. Ch. 511 ; and before coverture she may modify the trusts in such a way as to evade the provisions restricting her power of anticipation : *Re Chrimes* [1917], 1 Ch. 30 ; 86 L. J. Ch. 217. Until 1882 she could not give a valid power of attorney to receive income : *Kenrick* v. *Wood* (1869), L. R. 9 Eq. 333 ; 39 L. J. Ch. 92 ; nor could the court release the restriction, though it would be clearly for her benefit so to do.(*l*) The L. P. Act, 1925, s. 129, empowers a married woman by deed to appoint an attorney for the purpose of executing any deed or doing any act which she herself might do : See 1 Wolst. & Cherry, 11th ed., 347–48.

Married woman may appoint attorney.

Principles on which court will act in the exercise of the power to bind the interest of a married woman.

The power given to the court of dispensing with a restraint on anticipation will be exercised with caution. The first question on any application for this purpose is, whether it is for the benefit of the wife that it should be complied with. In determining this the court will balance the undoubted benefit of the restriction against anticipation against the alleged benefit of its removal. Thus, it will not remove the restraint in order to pay debts caused by the extravagance of the wife or her husband : *Re Pollard* [1896], 2 Ch. 552 ; 65 L. J. Ch. 796 ; nor in order to extend the scope of investments so as to give her a larger income : *Re Blundell* [1901], 2 Ch. 221 ; 70 L. J. Ch. 522 ; but it has done so to enable parents to start an only son in a profession by which he would cease to be dependent on them : *Re Sawyer* [1896], 1 Ir. R. 40. Even where the removal is for the wife's benefit, the court has a discretion whether it will make the order or not, and it refused to do so in a case where the object was to give effect to an arrangement of which the court, on other grounds, disapproved : *Re Little* (1889), 40 Ch. D. 418 ; 58 L. J. Ch. 233.

Under the Jud. Act, 1925, s. 192, the court may override a restraint on anticipation : *Morgan* v. *Morgan and Kirby* [1923], P. 1 ; 92 L. J. P. 8.

(*l*) *Robinson* v. *Wheelwright* (1855), 21 Beav. 214 ; 6 D. M. & G. 535 ; 25 L. J. Ch. 385 ; see *Wilton* v. *Hill* (1856), 25 L. J. Ch. 156.

Restraint on anticipation may be annexed to capital as well as income.

A restraint on anticipation may be annexed not only to a trust of income, but also to a limitation of the fee simple of land, or to an absolute gift of Consols or other personal property. The result of the cases on this subject may be thus stated :—

(1) If a legacy or share of residue is given to a married woman, or a trustee for her, " without power of anticipation," without any direction as to the payment or transfer of it to her, the testator will be supposed to intend that the executor shall retain and invest the capital, and pay the income to her, and the restraint will take effect :(*m*)

(2) If a legacy or share of residue is directed to be paid or transferred to a married woman " without power of anticipation," such a direction negatives any right in the executor or trustee to retain the money, and the restraint on anticipation is repugnant and void :(*n*)

(3) If the gift is reversionary, the restraint on anticipation takes effect until it falls into possession ; and whether it remains in force afterwards depends on whether the language of the trust instrument brings the case under (1) or (2) :(*o*)

(4) Where the restraint is imposed on an estate in fee simple the land formerly became unsaleable : *Bates* v. *Kesterton* [1896], 1 Ch. 159 ; 65 L. J. Ch. 108, till the court made an order removing the restraint.

Fee simple, &c., with a restraint.

Now a married woman entitled to a fee simple or term of years in land with a restraint on anticipation has the powers of a tenant for life : S. L. Act, 1925, s. 20 (1) (x) ; the limitation or trust creates a settlement : *ib.*, s. 1 (1) (iv), and the land is " settled land " ; hence a vesting instrument must be made in her favour : *ib.*, s. 13, in which S. L. Act trustees are nominated, and she can then make a title.

Can only attach to separate property.

A restraint on anticipation contained in an instrument dated or coming into operation before 1883 is of no effect, unless the income to which it applies is given expressly or by necessary

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(*m*) *Baggett* v. *Meux* (1846), 1 Ph. 627 ; 15 L. J. Ch. 262 ; *Re Ellis* (1874), L. R. 17 Eq. 409 ; 43 L. J. Ch. 444 ; *Re Currey* (1886), 32 Ch. D. 361 ; 55 L. J. Ch. 906 ; *Re Grey* (1887), 34 Ch. D. 85, 712 ; 56 L. J. Ch. 207, 511.

(*n*) *Re Croughton* (1878), 8 Ch. D. 460 ; 47 L. J. Ch. 795 ; *Re Bown* (1884), 27 Ch. D. 411 ; 53 L. J. Ch. 881. The latter case disapproves of the distinction made in *Re Clarke* (1882), 21 Ch. D. 748 ; 51 L. J. Ch. 855, between cash and a fund producing income ; see also *Re Bankes* [1902], 2 Ch. 333 ; 71 L. J. Ch. 708.

(*o*) *Re Bown, supra ; Re Spencer* (1885), 30 Ch. D. 183 ; 55 L. J. Ch. 80 ; *Re Tippett* (1888), 37 Ch. D. 444 ; *Re Bankes, supra.*

implication to the married woman for her separate use: *Stogdon* v. *Lee* [1891], 1 Q. B. 661; 60 L. J. Q. B. 669.

Can only attach to shares of legatees born in testator's lifetime.

A restraint on anticipation imposed by a testator on the shares of his daughter's children is only valid as to the shares of the children born in the testator's lifetime: *Re Game* [1907], 1 Ch. 276; 76 L. J. Ch. 168.

Effect of rule as to perpetuities on restraint.

Moreover, in imposing a restraint on anticipation, care must be taken that the restraint should cease after the expiration of lives in being and twenty-one years.

Does not apply to income already due.

A restraint on anticipation does not prevent a disposition of income already due but not actually paid: *Hood-Barrs* v. *Heriot* [1896], A. C. 174; 65 L. J. Q. B. 352; but a judgment cannot be enforced against income, to which the restraint applies, accruing due after the date of the judgment;(*p*) nor against arrears due at the date of the judgment, if the restraint existed at the date of the contract: *Wood* v. *Lewis* [1914], 3 K. B. 73.

A gift for separate use without the intervention of trustees makes husband a trustee.

Where money or other property has in fact been given to the separate use of a wife without the intervention of trustees, and has been paid or transferred to the husband, the separate trust remains attached to it unless and until it is shown, or can be inferred from the circumstances, that she has assented to its being freed from that trust. Such an inference will be made if the husband, with the acquiescence of the wife, uses the money in trade or in his family expenditure.(*q*) But where a married woman, to whom a legacy has been given, received from the executor a country cheque which she indorsed and handed over to her husband, whose bankers received it and by his direction placed the money to his deposit account, it was held on the evidence that the wife did not intend to give the cheque to her husband, and that it was still her separate estate: *Green* v. *Carlill* (1877), 4 Ch. D. 882; 46 L. J. Ch. 477. The burden of proving a gift of a capital sum by a married woman to her husband lies upon the persons claiming under the husband: *Re Flamank* (1889), 40 Ch. D. 461; 58 L. J. Ch. 518.

Separate income of wife, how long it remains her separate property.

The separate income of a wife remains her separate property so long as it is retained in the hands of the trustees of the settlement, or is paid to her separate account at a bank, or to

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(*p*) *Whiteley* v. *Edwards* [1896], 2 Q. B. 48; 65 L. J. Q. B. 457; *Bolitho* v. *Gidley* [1905], A. C. 98; 74 L. J. K. B. 430.

(*q*) *Gardner* v. *G.* (1859), 1 Giff. 129; 28 L. J. Ch. 903. It is apprehended that this inference is not affected by s. 3 of the M. W. P. Act, 1882, and that the money would, under the circumstances, be considered as given, not lent, to the husband.

Savings of separate income.

any person by her order and as her trustee, or if paid into her own hands, remains under her separate control; and any stock or other property, including real estate (*r*) or personal chattels (*Newlands* v. *Paynter* (1839), 4 My. & Cr. 408), purchased with the savings of her separate income, is also her separate property. But if the income is paid to the husband with the wife's acquiescence, a gift of such income from her to him will be presumed;(*s*) where the trust money is lent to the husband with the wife's consent, and he retains it for some time without paying interest, there will be a similar presumption as regards such interest.(*t*)

Payment of income to husband with wife's consent.

A trust of income for separate use attaches during each coverture, and is suspended during discoverture.

When property is given in trust to pay the income to a woman who is unmarried at the date of the gift for her separate use, either with or without a restraint on anticipation, the separate trust attaches upon her subsequent marriage. A similar trust in favour of a married woman who becomes a widow and then marries again without having dealt with the property, revives on her second marriage,(*u*) unless confined by the express terms of the instrument to the first coverture: *Moore* v. *Morris* (1857), 4 Drew. 33. In these cases the income which is received by the woman while discovert, or by any person on her behalf, from the trustees of the fund, becomes her absolute property, and if unspent at the time of her subsequent marriage would, under the law as it stood before the Act of 1882, have passed to the husband in his marital right: *Spicer* v. *Dawson* (1857), 26 L. J. Ch. 704. But if any part of such income, though received by the trustees, has not been paid by them to the woman or to any person on her behalf at the time of the marriage, the separate trust attaches to the money retained in the hands of the trustees: *Ashton* v. *McDougall* (1842), 5 Beav. 56; 11 L. J. Ch. 344.

So also a trust of corpus for separate use comes into operation on marriage.

A trust for separate use annexed to the capital of property, whether real or personal, given to an unmarried woman, who has afterwards married, will have come into operation on the

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(*r*) *Darkin* v. *D.* (1853), 17 Beav. 578; 23 L. J. Ch. 890; *Mercier* v. *M.* [1903], 2 Ch. 98; 72 L. J. Ch. 511.

(*s*) *Beresford* v. *Abp. of Armagh* (1844), 13 Sim. 643; 13 L. J. Ch. 235; *Arthur* v. *A.* (1848), 11 Ir. Eq. Rep. 511, 513; *Caton* v. *Rideout* (1849), 1 Mac. & G. 599; *Edward* v. *Cheyne* (1888), 13 A. C. 385; *Re Young* [1913], 29 T. L. R. 391.

(*t*) *Rowley* v. *Unwin* (1855), 2 K. & J. 138; *Ex p. Green* (1832), 2 Deac. & Ch. 113; 2 L. J. Bk. 2.

(*u*) *Tullett* v. *Armstrong* (1838), 4 My. & Cr. 377; 9 L. J. Ch. 41; *Scarborough* v. *Borman* (1839), 4 My. & Cr. 378; 9 L. J. Ch. 48; see also *Hawkes* v. *Hubback* (1870), L. R. 11 Eq. 5; 40 L. J. Ch. 49.

marriage, provided that she did no act while discovert to destroy the separate trust. Thus, in a case where a leasehold house and the furniture in it were given by Will, without the intervention of trustees, to a single woman for her separate use, and she subsequently married, and after the marriage she and her husband took possession of the house and furniture, it was held that they retained their separate character, and were not liable for the husband's debt: *Newlands* v. *Paynter* (1843), 4 My. & Cr. 408.

SECT. III.—*The right of separate property conferred on the wife by the Married Women's Property Acts.*

Woman married since 1882 entitled to all her property for her separate use.

Under the M. W. P. Act, 1882, s. 2, every woman married after 1882 is entitled to hold as her separate property, and to dispose of by Will or otherwise, all real and personal property belonging to her at the time of the marriage or acquired by or devolving on her afterwards; and under s. 5 every woman married before 1883 is entitled to hold as her separate property, and to dispose of by Will or otherwise, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion or remainder, accrues after 1882. Property which was reversionary in 1882, but has fallen into possession since, is not within this section.(*v*) But a mere *spes successionis, e.g.*, the possibility of becoming entitled under a trust for the persons who shall be the next of kin of A. on the failure of preceding trusts, is not a reversionary interest for this purpose.(*w*)

Woman married before 1883 entitled for her separate use to property accruing in title after 1882.

Woman married since 9th August, 1870, entitled for her separate use to certain kinds of property.

Under the Act of 1870 a woman who has married between the 9th August, 1870, and the 31st December, 1882 (inclusive), is entitled to hold as her separate property and to dispose of:

(1) any personal property which has come to her, since the marriage and before 1883, as next of kin or one of the next of kin of an intestate;

(2) any sum of money not exceeding £200 which has come to her since the marriage under any deed or Will; and

(3) the rents and profits arising during the joint lives of any freehold [copyhold, or customaryhold] property which has

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(*v*) *Reid* v. *R.* (1886), 31 Ch. D. 402; 55 L. J. Ch. 294; *Re Bacon* [1907], 1 Ch. 475; 76 L. J. Ch. 213.

(*w*) *Re Parsons* (1890), 45 Ch. D. 51; 59 L. J. Ch. 666; *cf. Re Mudge* [1914], 1 Ch. 115; 83 L. J. Ch. 243.

descended upon her, since the marriage and before 1883, as heiress or co-heiress of an intestate.(*x*)

Married woman entitled to wages and earnings in separate employment since 8th August, 1870.

A married woman, whatever may be the date of her marriage, is entitled, for her separate use to any wages, earnings, money, and property, acquired or gained by her since the 8th August, 1870, in any employment, trade or occupation, in which she is engaged or which she carries on separately from her husband or by the exercise of any literary, artistic, or scientific skill and all investments of such wages, earnings, money, or property: Act of 1870, s. 2; Act of 1882, ss. 2, 5.

The Acts of 1870 and 1882 contain special provisions as to certain kinds of personal estate, such as stock in the funds, shares in companies, &c., standing in the name of a married woman.(*y*)

Husband's rights in property of wife undisposed of not affected.

If the husband survives the wife, his rights in any real or personal estate made her separate property by the Act of 1882 or otherwise, so far as such property is not disposed of by her in her lifetime or by her Will, were, if she died before 1926, the same as under the old law. Thus, he became entitled to curtesy in her freehold lands of inheritance, when there had been issue inheritable of the marriage,(*z*) and he became absolutely entitled to her personal estate in his own right as regards chattels real or chattels personal in possession,(*a*) and as regards things in action on taking out administration.(*b*) But if the wife dies intestate after 1925, then the rights to her estate are governed by Ad. of E. Act, 1925, Pt. IV. Though she may have died before 1926, yet if any of her property remains vested in personal representatives, the powers to convey and assent in writing and to make appropriations conferred: *ib.*, ss. 36, 39 and 41, apply thereto as if she had died after 1925.

Husband and wife may be joint tenants since Act.

If land is conveyed since the Act of 1882 to husband and wife jointly, they are joint tenants, and the interest of the wife is her separate property.(*c*)

(*x*) Act of 1870, ss. 7, 8; *Johnson* v. *J.* (1887), 35 Ch. D. 345; 56 L. J. Ch. 326.

(*y*) Act of 1870, s. 5; Act of 1882, ss. 6–10; see *French* v. *Gething* [1922], 1 K. B. 236; 91 L. J. K. B. 276.

(*z*) *Cooper* v. *Macdonald* (1878), 7 Ch. D. 288; 47 L. J. Ch. 373; *Hope* v. *H.* [1892], 2 Ch. 336; 61 L. J. Ch. 441.

(*a*) *Surman* v. *Wharton* [1891], 1 Q. B. 491; 60 L. J. Q. B. 233; *Re Evans* [1910], 1 Ir. R. 95.

(*b*) See *Molony* v. *Kennedy* (1839), 10 Sim. 254; *Re Lambert* (1888), 39 Ch. D. 626; 57 L. J. Ch. 927.

(*c*) *Thornley* v. *T.* [1893], 2 Ch. 229; 62 L. J. Ch. 370; *Dunbar* v. *D.* [1909], 2 Ch. 639; 79 L. J. Ch. 70.

A woman married since 1882 can convey, by an unacknowledged deed and without her husband's concurrence, the legal estate in land of which she is a mortgagee: *Re Brooke and Fremlin* [1898], 1 Ch. 647; 67 L. J. Ch. 272.

Act applies where wife is mortgagee.

No difficulties arise in regard to the acquisition and disposition of trust estates by a married woman: L. P. Act, 1925, s. 170, which replaces, with amendments, M. W. P. Act, 1907, s. 1. It applies to a woman married after 1882, and to a woman married before 1883 who became a trustee or personal representative on or after 1st January of that year. It confirms dealings made after 1882.(*d*)

Acquisition and disposition of trust estates.

SECT. IV.—*The liability of a married woman in respect of contracts entered into and wrongs committed by her during the coverture, and before the marriage, respectively, and how far her husband is liable for the same.*

Before the passing of the M. W. P. Act, 1882, a married woman could not enter into any contract on which she was liable to be personally sued, but if she had separate property she might, in equity, and as an incident of such property, contract debts and engagements to be paid and satisfied out of it, and the court would enforce payment accordingly.(*e*) It was not necessary that the contract should refer in terms to the separate property; it was sufficient if an intention to charge it could be collected from the nature of the contract or from the circumstances.

Before Act of 1882 a married woman might in equity contract debts to be paid out of her separate property.

Under the Act of 1882, as amended by the Act of 1893, a married woman is capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing or being sued either in contract or tort, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, and this is so whether she has or has not any separate property at the date of the contract. Any damages or costs recovered against her are payable out of her separate property, and not otherwise: s. 1 (2); see also M. W. P. Act, 1893, s. 1. The Act of 1882 applies to contracts between husband and wife, and a husband

Capacity of married woman to enter into contracts, &c., under 1882 and 1893 Acts.

(*d*) It meets *Re Harkness and Allsopp* [1896], 2 Ch. 358; 65 L. J. Ch. 726, but query as to the correctness of that decision, see M. W. P. Act, 1882, ss. 18, 24; and confirms *Re Leslie* [1911], 1 Ch. 611; 80 L. J. Ch. 486, a case on the Public Trustee Act.

(*e*) *Johnson* v. *Gallagher* (1861), 3 D. F. & J. 494; 30 L. J. Ch. 298.

may sue his wife for money which after the marriage he has lent her on a contract, either express or implied, to repay it out of her separate estate : *Butler* v. *B.* (1885), 16 Q. B. D. 374 ; 55 L. J. Q. B. 55.

Effect of restraint on anticipation.

The contracts of a married woman cannot be enforced against income which she is restrained from anticipating, nor can she be made liable thereout for the consequences of fraud committed by her;(*f*) the law in this respect is not altered by the M. W. P. Acts : Act of 1882, s. 19 ; Act of 1893, s. 1. But a restraint on anticipation is at an end when the income to which it is attached has become due, hence a judgment against a married woman may be enforced against any income which has become due at the date of the judgment, but not against income accrued since,(*g*) nor against arrears of income due at the date of the judgment, if the restraint was in force when the contract was made : *Wood* v. *Lewis* [1914], 3 K. B. 73.

Married woman may become bankrupt.

A married woman carrying on a trade, whether or not separately from her husband, is, by the Bkcy. Act, 1914, s. 125, made liable to the bankruptcy laws as if she were a *feme sole* : see 2 Wolst. & Cherry, 11th ed.

A trade belonging to a married woman, but carried on by her husband on her behalf, was, under the Act of 1882, 1 (5) (now repealed), a separate trade : *Re Simon* [1909], 1 K. B. 201 ; 78 L. J. K. B. 392 ; though not where she carried on business in partnership with him : *Re Helsby* [1894], 63 L. J. Q. B. 261.

Appointment by Will of a married woman makes property liable to her debts.

By s. 4 of the Act of 1882 the execution of a general power by the Will of a married woman makes the appointed property liable to her debts and liabilities in the same manner as her separate estate if she had separate estate at the date of the appointment.(*h*)

Position of husband where wife executrix before Act.

The husband being answerable for his wife's acts, she could not, before the Act of 1882, undertake the office of executrix without his consent, nor give discharges for payments made to her in that character. The husband in his marital right was

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( ) *Jackson* v. *Hobhouse* (1817), 2 Mer. 483 ; *Clive* v. *Carew* (1859), 1 J. & H. 199 ; 28 L. J. Ch. 685 ; *Arnold* v. *Woodhams* (1873), L. R. 16 Eq. 29 ; 42 L. J. Ch. 578 ; *Chapman* v. *Biggs* (1882), 11 Q. B. D. 27 ; *Edwards* v. *Porter* [1925], A. C. 1 ; 94 L. J. K. B. 65.

(*g*) *Hood-Barrs* v. *Heriot* [1896], A. C. 174 ; 65 L. J. Q. B. 352 ; *Whiteley* v. *Edwards* [1896], 2 Q. B. 48 ; 65 L. J. Q. B. 457 ; *Bolitho* v. *Gidley* [1905], A. C. 98 ; 74 L. J. K. B. 430. For form of judgment, see *Re Turnbull* [1900], 1 Ch. 180 ; 69 L. J. Ch. 187.

(*h*) *Re Fieldwick* [1909], 1 Ch. 1 ; 78 L. J. Ch. 153 ; but see the M. W. P. Act, 1893, s. 1, as to contracts entered into since that Act.

entitled to dispose of the personal estate vested in his wife as executrix, or to give receipts for or release debts due to the testator's estate: *Thrustout* v. *Coppin* (1772), 2 W. Bl. 801; and he was liable for assets received or *devastavits* committed by him or his wife during the coverture: *Smith* v. *S.* (1856), 21 Beav. 385. Since the Act of 1882, a wife may accept the office of trustee, executrix, or administratrix, and she will be liable in respect and to the extent of her separate property for all breaches of trust and *devastavits*, and her husband, unless he intermeddles, will be free from liability.(*i*)

Married woman can now be trustee and executrix and liable as such.

Section 23 of the Act of 1882 provides that the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities as she would have if living. A husband who had become entitled *jure mariti* to his wife's leasehold land without taking out administration was her personal representative within the meaning of this section.(*j*)

Rights and liabilities of personal representative of wife as respects separate property. *Jure mariti.*

Whether a wife has or has not separate property, her husband is not liable for debts contracted by her during the marriage, unless he has given her authority to pledge his credit. Whether she has such an authority is a question of fact or reasonable presumption to be determined in each case according to the circumstances. While they live together it will be presumed, in the absence of evidence to the contrary, that he has authorised her to give orders to tradesmen for such things as fall within the domestic department ordinarily entrusted to the wife's management, *e.g.*, the supply of provisions for the house, clothing for the members of the family, and similar articles.(*k*) The presumption may be rebutted by evidence that he has supplied her with sufficient money to buy the necessary articles, and has expressly ordered her not to get them on credit, subject, however, to the qualification, that if he has, up to the time of giving such order, acted in such a manner as to lead tradesmen to suppose that the authority exists, he would be bound to inform them of its withdrawal.(*l*)

Husband not liable for wife's debts, unless he has given her authority.

Authority is a question of fact or reasonable presumption, according to circumstances.

(*i*) M. W. P. Act, 1882, ss. 18, 24, and see L. P. Act, 1925, s. 170; also Ad. of E. Act, 1925, ss. 45 (1), 46, 52.

(*j*) *Surman* v. *Wharton* [1891], 1 Q. B. 491; 60 L. J. Q. B. 233. As to the husband's liability; *Re Parkin* [1892], 3 Ch. 510; 62 L. J. Ch. 55.

(*k*) *Phillipson* v. *Hayter* (1870), L. R. 6 C. P. 38; 40 L. J. C. P. 14; and see *Paquin, Ltd.* v. *Beauclerk* [1906], A. C. 148; 75 L. J. K. B. 395.

(*l*) *Jolly* v. *Rees* (1864), 33 L. J. C. P. 177; *Debenham* v. *Mellon* (1880), 6 A. C. 24; 50 L. J. Q. B. 155; *Morel Bros. & Co.* v. *E. of Westmoreland* [1904], A. C. 11; 73 L. J. K. B. 93.

No presumption if living separate, except as a matter of necessity.

If the husband and wife are living separately, the wife has no authority to pledge her husband's credit: *Swan & Edgar* v. *Mathieson* (1910), 103 L. T. 832; except as a matter of necessity, as where she has been deserted or forced to leave her home, and has no sufficient means of her own. If they separate by mutual consent, there is no implied authority, so long as he makes her an adequate allowance, and duly pays it.(*m*)

Right of person who has advanced money to wife for necessaries.

A person advancing money to a married woman who has been deserted by her husband, where the money has been laid out in necessaries for her, is entitled to stand in the place of the persons who actually supplied those necessaries, and to recover the money from the husband.(*n*)

Husband's liability for wife's wrongful acts.

It has been held that s. 1 (2) of the Act of 1882 did not abolish the liability of the husband for his wife's wrongful acts during the coverture, and that the plaintiff might still sue the husband and wife together, or the wife alone, as he thought fit.(*o*)

Statutory liabilities of wife and husband for wife's ante-nuptial debts.

Under the Act of 1882 a wife is liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, and she may be sued for any such debt or in respect of any such contract or wrong, and all sums recovered in the action will be payable out of her separate property, and as between her and her husband her separate property is primarily liable. The husband is also liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her before marriage, to the extent of any property acquired by him from or through her but not further or otherwise. The husband and wife may be sued jointly, in which case they cannot set up separate defences: *Beaumont* v. *Kaye* [1904], 1 K. B. 292; 73 L. J. K. B. 213; but unless it is found in the action that the husband is liable, he will be entitled to his costs of defence: M. W. P. Act, 1882, ss. 13–15.

Common law liability of wife for ante-nuptial debts.

The Act does not take away the common law liability of the wife in respect of her ante-nuptial contracts. She is still liable

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(*m*) *Johnson* v. *Sumner* (1858), 3 H. & N. 261; 27 L. J. Ex. 341; *Biffin* v. *Bignell* (1862), 7 H. & N. 877; 31 L. J. Ex. 189; *Eastland* v. *Burchell* (1878), 3 Q. B. D. 432; 47 L. J. Q. B. 500.

(*n*) *Jenner* v. *Morris* (1861), 3 D. F. & J. 45; 30 L. J. Ch. 361; *Deare* v. *Soutten* (1869), L. R. 9 Eq. 151.

(*o*) *Seroka* v. *Kattenburg* (1886), 17 Q. B. D. 177; 55 L. J. Q. B. 375; *Earle* v. *Kingscote* [1900], 2 Ch. 585; 69 L. J. Ch. 725; but see *Cuenod* v. *Leslie* [1909], 1 K. B. 880; 78 L. J. K. B. 695; *Burdett* v. *Horne* (1911), 27 T. L. R. 402; *Cole* v. *De Trafford* [1917], 1 K. B. 911; *Edwards* v. *Porter* [1925], A. C. 1; 94 L. J. K. B. 65.

to a judgment against her personally under any such contract, and to be committed to prison under s. 9 of the Debtors Act, 1869, for disobeying it, if she has the means to pay.(p) On the other hand, a judgment against the wife in respect of a post-nuptial liability can only be enforced against her separate estate, and there is no power to commit her for non-compliance with it.(q) But a wife who is a personal representative can be attached for non-compliance with an order directing her to pay into court money shown to be in her possession in that character: *Re Turnbull* [1900], 1 Ch. 180; 69 L. J. Ch. 187.

Restraint on anticipation void against ante-nuptial debts.

A restraint on anticipation contained in a marriage settlement of the wife's own property has no validity against debts contracted by her before marriage: Act of 1882, s. 19.

SECT. V.—*The effect of judicial separation,(r) as to the wife's property, and her capacity to contract.(s)*

Judicial separation or protection order.

The Jud. Act, 1925, ss. 194, 195, replacing the Matrimonial Causes Act, 1857, ss. 25, 26, places a wife, judicially separated from her husband or who has obtained a protection order, in the position of a *feme sole* as regards property afterwards acquired by her and as regards her capacity to contract.

Power for court to order settlement of guilty wife's property.

The Jud. Act, s. 191, enables the court, in case of a divorce or judicial separation for adultery of the wife, to order a settlement of the wife's property for the benefit of the innocent party and the children of the marriage or either of them.(t)

And to alter existing settlements.

The Jud. Act, s. 192, enables the court, after a final decree of nullity or dissolution of marriage, to inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties, and to make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of the respective parents, as to the court shall seem fit; (u) for this purpose it may override a restraint on anticipation: *Morgan* v. *M.* [1923], P. 1; 92 L. J. P. 8; the court may exercise these powers where there are no children of the marriage. (v)

(p) *Robinson* v. *Lynes* [1894], 2 Q. B. 577; 63 L. J. Q. B. 759. As to what property can in such a case be made available by way of execution on a judgment against the married woman, see *Birmingham, &c., Socy.* v. *Lane* [1904], 1 K. B. 35; 73 L. J. K. B. 28; *Rothschild* v. *Fisher* [1920], 2 K. B. 243; 89 L. J. K. B. 521.

(q) *Draycott* v. *Harrison* (1886), 17 Q. B. D. 147; *Scott* v. *Morley* (1888), 20 Q. B. D. 120; 57 L. J. Q. B. 43.

(r) As regards separation by agreement, see notes to Separation Deeds, *infra.*

(s) See generally on this subject, Lush, 4th ed.

Restraint.

(t) But the Court cannot under this section order a settlement by a divorced wife, who has remarried, of property to which she is entitled under the trusts of her father's Will for her separate use without power of anticipation: *Loraine* v. *L.* [1912], P. 222; 82 L. J. P. 29; and see *Mitchell* v. *M.* [1891], P. 208.

Restraint.

Power to alter separation deed.

A separation deed is a settlement for the purpose of this Act, and the court may, after a dissolution of the marriage, relieve a husband from a covenant in a separation deed. (w) But this power cannot be exercised after a judicial separation: *Gandy* v. *G.* (1888), 7 P. D. 168; 57 L. J. P. 41.

Court may annul limitation to children of subsequent marriage.

The court may, under this power, annul a limitation contained in a marriage settlement of real estate in favour of the children of a subsequent marriage. (x)

Court cannot accelerate a power of appointment in favour of second husband, &c.

Where the wife has under her marriage settlement a power, "in case she survives her husband," to appoint part of the trust fund in favour of a second husband and the issue of a second marriage, the court has no power to accelerate the power on the dissolution of the marriage: *Pollard* v. *P.* [1894], P. 172; 63 L. J. P. 104. But the court has power to vary a marriage settlement so as to deprive infant children of the marriage of part of their interests secured to them by such settlement: *Whitton* v. *W.* [1901], P. 348; 71 L. J. P. 10; and to make an order affecting settled property, even after a child of the dissolved marriage has attained a vested interest: *Blood* v. *B.* [1902], P. 190; 71 L. J. P. 97.

Where the wife, who was the guilty party, had a power to appoint by Will a life interest to her husband, the court, under s. 5 of the Act of 1859, now the Jud. Act, 1925, s. 192, ordered that the income should after her death be paid to him for life: *Hartopp* v. *H.* [1899], P. 65; 68 L. J. P. 33.

Court has power, in the event of a decree for restitution of conjugal rights not

The Jud. Act, 1925, ss. 187, 190, 191, provides that in the event of a decree for the restitution of conjugal rights not being complied with, the court may, where the wife is the applicant, order the husband to make periodical payments to her, and if the husband is the applicant, and the wife is entitled to any property, either in possession or reversion or in receipt of any profits of trade or earnings, the court may order a settlement to be made for the benefit of the husband and the children or any of them, or may order part of the profits of trade or earnings to be paid periodically by the wife to the husband or to him or any other person for the benefit of the children.

(u) See *Dormer* v. *Ward* [1901], P. 20; 69 L. J. P. 144; *Hodgson Roberts* v. *H. R.* [1906], P. 142; 75 L. J. P. 48.

(v) See *Ollier* v. *O.* [1914], P. 240; *Woodcock* v. *W.* (1915), 111 L. T. 924.

(w) *Worsley* v. *W.* (1868), L. R. 1 P. 648; 38 L. J. P. & M. 43; *Bullock* v. *B.* (1872), L. R. 2 P. 389; 41 L. J. P. & M. 83; see also *Morrall* v. *M.* (1881), 6 P. D. 98; 50 L. J. P. 62. As to what is a settlement for this purpose: *Bosworthwick* v. *B.* (1926), 70 Sol. J. 857; art. *ib.* 851.

(x) *Meredyth* v. *M.* [1895], P. 92; 64 L. J. P. 54; and see also *Morrissey* v. *M.* [1905], P. 90; 74 L. J. P. 11.

being complied with, to order a settlement.

Under the Administration of Justice Act, 1920, matrimonial causes may now be tried at Assizes.

Justices may in certain cases make order having effect of judicial separation.

The Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, enable a court of summary jurisdiction, in cases of aggravated assault or persistent cruelty or desertion or neglect and in certain other cases, to make an order that the wife is no longer bound to cohabit with her husband, which order is to have the effect of a decree of judicial separation on the ground of cruelty, and the order may contain provisions as to the legal custody of the children, and for the payment by the husband of a weekly sum for maintenance: see Lush, 4th ed.

Maintenance and alimony.

The court has power, under the Jud. Act, 1925, s. 190, to grant maintenance and alimony on any decree for dissolution or nullity of marriage.(y)

Deduction of income tax.

Alimony.

(y) *Churchward* v. *C.* [1910], P. 195; 79 L. J. P. 59; *K.* v. *K.* [1910], P. 140; 79 L. J. P. 33; *Morgan* v. *M.* [1923], P. 1; 92 L. J. P. 8; *Maidlow* v. *M.* [1914], P. 245; *Hall* v. *H.* [1915], P. 105; 84 L. J. P. 93. As to deduction of income tax, see *Smith* v. *S.* [1923], P. 191; 92 L. J. P. 132; *Re Gordon's Sett.* [1924], 1 Ch. 146; 93 L. J. Ch. 187; as to the amount of alimony where husband has a fluctuating income: *Dean* v. *D.* [1923], P. 172; 92 L. J. P. 109; The Married Woman's Maintenance Act, 1920; Jud. Act, 1925, ss. 187 (on decree for restitution), 190 (on divorce or nullity); *ib.*, sub-s. (4) (on restitution or judicial separation); *ib.*, sub-s. (5) (alimony generally); s. 196 (variation of orders).

CHAPTER III.

The Law and Practice Relating to Settlements.

Distinction between personalty and realty settlements.

A clear distinction must be drawn between two classes of settlements :—

Personalty settlements.

(1) Personalty Settlements, in which the settled property, of whatever description, is made to devolve as personal estate. See new Ad. of E. Act, 1925, ss. 33 and 46, in regard to intestacies. In this case land and all interests therein are, by the intervention of a trust for sale, converted into personal property and the proceeds of sale are settled.

By this method the same results can now be obtained as were formerly only available in the case of realty or strict settlements, for personalty can, under L. P. Act, 1925, s. 130, be entailed in the same way as freehold land.

No vesting instruments on change of ownership where a trust for sale is used.

Where a trust for sale is employed the persons in whom the legal estate in the land must be vested during the continuation of the settlement are the trustees for sale. No vesting deeds or vesting assents are required on a change of ownership. Only when new or additional trustees are appointed or trustees are discharged will there be any conveyance of the legal estate. Such a conveyance takes the form of a vesting declaration (express or implied) contained or implied in the deeds appointing or discharging trustees. The beneficial or equitable interests in the property (*i.e.*, the proceeds of sale and the rents until sale) are kept off the title to the land, for a purchaser is not concerned therewith (L. P. Act, 1925, s. 27 (1)), whether or not the trusts are declared by the instrument (if any) creating the trust for sale.

Equitable interests kept off the title.

Separate instruments.

In nearly all cases there will be two instruments, one conveying the land on trust for sale (*e.g.*, a conveyance on a marriage or an assent by personal representatives to trustees on trust for sale), the other declaring the trusts of the proceeds of sale and the rents until sale (*e.g.*, the personalty settlement or the Will).

Trustees for sale the persons to make title.

In this case the persons to make title are the trustees for sale (though they can delegate some of their powers to the tenant for life of the proceeds : L. P. Act, 1925, s. 29); hence, where the dealings with the settled property are likely to be frequent (*e.g.*, in large estates) this method will not usually be adopted. The trustees for sale are given the powers of a tenant for life: L. P. Act, 1925, s. 28; where land, formerly settled land, becomes subject to the statutory trusts, the trustees for sale will have the additional powers formerly conferred by the realty settlement: L. P. (Amend.) Act, 1926, Sch. (amending s. 28, *supra*).

Realty or strict settlements.

(2) Realty or Strict Settlements, in which the settled property, of whatever description, is made to devolve as land. The land is conveyed or vested in the tenant for life or statutory owners on trusts creating equitable interests for life or in tail successively with an ultimate equitable remainder in fee simple, or for an absolute interest. Or money may be directed to be laid out in the purchase of land to be conveyed to the tenant for life or statutory owners on the requisite trusts.

In realty settlements the persons to make title (save when the land is vested in personal representatives) are the tenants for life or statutory owners, all capital arising from transactions being paid to S. L. Act trustees.

On every change of ownership by reason of a death or otherwise there will either be a vesting deed or a vesting assent in favour of the beneficiary who becomes entitled.

The form to be adopted.

Every settlement should take one of these forms. Attempts at blending the two forms must generally result in ambiguity and possibly in disaster. Hence, when land is to be settled, the practitioner must first make up his mind which course to adopt. The first matter for consideration is whether, after the death of the husband and wife, it is intended that the property should be divided among the issue of the marriage; if so, there should be a trust for sale.

On the other hand, if the property is to be kept together, the younger children being merely given charges thereon, then there should be a strict or realty settlement. Again, as a general guide, land held as an investment, *e.g.*, shop property, building estates, and so forth, should, unless forming part of a family estate, be settled by means of a trust for sale, while strict settlements should be resorted to in the case of large family estates.

Trust for sale does not involve a sale.

The fact that land is conveyed upon trust for sale does not necessarily mean that it will be sold; power is given to postpone the sale for an indefinite period without involving the trustees in any liability: L. P. Act, 1925, s. 25. When all the interests in the proceeds of sale have become absolutely vested, the trustees for sale can effect a partition if this is desired: *ib.*, s. 28 (3) (4).

SECT. I.—*Personalty Settlements executed on Marriage.*

(i) *Where no Land is to be Settled.*

Usual form of a personalty settlement.

The usual form of a settlement of pure personal estate upon marriage is as follows :—

Parties and recitals.

(1) Parties.

(2) Recital of the intended marriage.

(3) Recitals dealing with the property intended to be settled, *e.g.*, the transfer of investments to the trustees, the title to reversionary interests, &c.

Assignment of reversionary interests, &c.

(4) The operative part should commence with the assignment of reversionary interests, covenants to settle principal sums and the trusts till marriage of investments previously transferred.

Trusts until marriage.

(5) The first trusts to be declared are for the benefit of the respective settlors until the marriage.

Investment.

(6) Then follows a trust for the investment or variation of the investments of the settled property, and the definition of the funds.

Life interests.

(7) The destination of the income during the lives of the husband and wife must next be dealt with. Usually the husband takes the first life interest in the property settled by him or on his behalf, and the wife takes the first life interest in the property settled by her or on her behalf.

Protected life interests.

The husband's interest is, where property is settled by, *e.g.*, his father, often protected against his bankruptcy by means of a gift over, followed by a discretionary trust; this can be effected by declaring that during his life the income is to be held on " protective trusts " for his benefit: T. Act, 1925, s. 33; but where he himself settles property, this course is not effectual, and sometimes, particularly where he is engaged in a precarious business, the first life interest is given to the wife or an immediate discretionary trust is declared.

" Separate use " unnecessary.

The wife's interest is usually given without power of anticipation. Having regard to the M. W. P. Acts, 1882 and 1907, it is unnecessary to expressly limit the interest for her separate use.

After the death of husband or wife the survivor is usually given a life or lesser interest in the property settled by or on behalf of the deceased spouse, or in part thereof. These interests usually follow the form of the life interests previously limited to the survivor in respect of his or her own property.

Trusts for issue after death of husband and wife.

(8) After the death of both husband and wife the ordinary trusts of a marriage settlement are for the children, or remoter

issue of the marriage, as the husband and wife or the survivor shall appoint; and, in default of appointment, for the children equally, the shares of sons to vest at twenty-one, and the shares of daughters to vest at twenty-one or marriage, with a provision that any appointed share shall be brought into hotchpot.

Reason for extending power of appointment to issue.

The advantage of extending the power to remoter issue is, that if a son to whom no share has been appointed dies, leaving issue, the donees of the power are enabled to provide for such issue without attracting double duty; other cases may happen in which it may be desirable that provision should be made for grandchildren.

Maintenance clause unnecessary.

An express provision for the maintenance of the issue while infants is unnecessary, having regard to T. Act, 1925, s. 31.

Advancement clause unnecessary.

An advancement clause in a personalty settlement is unnecessary; this is supplied by T. Act, 1925, s. 32.

Ultimate trusts in default of issue, as to husband and wife's property respectively.

(9) If there are no issue of the marriage who attain vested interests, it is usually provided that the trust property, if settled by the husband, shall revert to him, and if settled by the wife, shall go to her appointees by Will, or by deed executed while she is discovert, and in default of appointment, to the wife absolutely if she survives the husband, but if not, to the persons who would have taken under the Ad. of E. Act, 1925 (with or without any special variation), if she had died possessed thereof intestate. Formerly it was usual, after referring to the Statutes of Distribution (now repealed) to add "without ever having been married"; these words prevented the husband from taking the fund as administrator of his wife; (a) they are now unnecessary if the husband is given a life interest by the settlement, he only takes an absolute interest under s. 46 (1) (v) when all the near relations have failed to take.

"Statutory next of kin."

It will be convenient to use the expression "statutory next of kin," as that is defined by s. 50 (1) to mean the persons who would take beneficially under the foregoing provisions of Pt. IV of the Ad. of E. Act, 1925.

Property settled by reference to previous trusts.

(10) The next clauses of the settlement deal with property settled by reference to the trusts of the property already settled, *e.g.*, a policy of assurance, a covenant by a parent to pay an

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(a) See *Re Smith* [1903], 1 Ch. 373; 72 L. J. Ch. 184; *Re Brydone* [1903], 2 Ch. 84; 72 L. J. Ch. 528; and see the effect of these words on the interest of children of a prior marriage where the wife dies intestate: *Boyce* v. *Wasbrough* [1922], 1 A. C. 425; 91 L. J. Ch. 369; and as to the construction of such words in a will: *Re Jones* [1915], 1 Ch. 246; 84 L. J. Ch. 222.

Covenant to settle after-acquired property.(*b*)

annual sum, or a covenant by the wife to settle her after-acquired property. With regard to covenants to settle after-acquired property it should be borne in mind—

(a) That the covenant is not a "usual clause," and should only be inserted under express instructions: *Re Maddy* [1901], 2 Ch. 820; 71 L. J. Ch. 18. Where the covenant is employed a power should be reserved to the wife to make a settlement on a future marriage;

(b) That the covenant should not be so drawn as to cover property in which the wife has an interest at the time of the marriage. Such property, if intended to be settled, should be expressly assigned to the trustees at the commencement of the operative part.

Power for wife to appoint to future husband and issue of future marriage.

(11) When the property settled on the part of the wife constitutes the bulk of her fortune or is of considerable amount, it is desirable that a power should be reserved for her to appoint a portion of the wife's fund in favour of a second husband and the issue of a second marriage. This power is nearly always inserted in infants' settlements made by the court. In the absence of such a power, the wife may be left a widow by her first husband with only one child, and if she marries again the whole of her settled fortune will go to the child of the first marriage to the exclusion of the family, however large, of the second marriage. And the same observation applies as regards property settled by the husband.

Powers of trustees.

(12) The subsequent clauses of the settlement should confer such powers upon the trustees as the circumstances and the nature of the settled property require. In view of the powers conferred by the T. Act, 1925, and the L. P. Act, 1925, these should seldom run to any great length.

Power to appoint new trustees.

(13) The last clause usually confers power on the husband and wife and the survivor of them to appoint new trustees of the settlement.

Schedules.

(14) Schedules are usually added containing particulars of the settled property. It is convenient to show, by headings to the schedules, what particulars they respectively contain, *e.g.*, "Particulars of investments settled by the husband"; "Particulars of investments subject to the trusts of the Settlement of ——"

(*b*) See also as to after-acquired property, note to the covenant to settle, *infra*.

(ii) *Where Land is to be Settled as Personalty.*

Conveyance of land on trust for sale and settlement of proceeds as personalty.

The correct method of settling land where the beneficial interests are to be settled as personal estate is by conveying it to trustees upon trust for sale and then by a separate deed of even date settling the proceeds, with a provision, that, until sale, the rents and profits shall be paid and applied in the same manner as the income of the proceeds would be applicable if a sale had been made.

Mode of making settlements on trust for sale.

Where land is to be settled on trust for sale it is proper, except where the title to the land is registered under the L. R. Act, 1925 (in this case the register keeps the beneficial interests off the title and where only registered land is dealt with the trust for sale may be inserted in the settlement itself), for the conveyance on trust for sale to be by a deed separate from the settlement declaring the trusts of the proceeds of sale, for in this way the beneficial interests in the net proceeds will not be disclosed when the trustees sell or exercise the powers conferred on them by the L. P. Act, 1925, s. 28. This section confers on the trustees all the powers which are, by the S. L. Act, given to a tenant for life under a realty settlement as well as those given to S. L. Act trustees. The result is that express powers of leasing or of effecting other dealings will seldom be required. If there is a sale, under the trust for sale, and a re-investment in the purchase of land, it must be conveyed to the trustees on trust for sale: L. P. Act, 1925, s. 28. Under s. 29 the trustees can delegate their powers of leasing, and accepting surrenders to the person entitled to the income under the personalty settlement.

Purchase of land.

Application of S. L. Act to trusts for sale.

Save that trustees for sale have the same powers as a tenant for life, the S. L. Act, 1925 (as amended), has no bearing on land held on trust for sale. As soon as land becomes subject to a trust for sale it ceases to be "settled land": S. L. Act, 1925, s. 1 (7) (inserted by L. P. (Amend.) Act, 1926, Sch.), and a strict "settlement" ceases as soon as the land is held on trust for sale: *ib.*, s. 3 (as similarly amended). For instance, it becomes subject to a trust for sale as soon as a limitation in undivided shares takes effect in possession: *ib.*, s. 36 (as amended), the land should then be vested in the former S. L. Act trustees, who will have the statutory powers and any additional powers conferred by the realty settlement.

Power to appoint trustees.

The conveyance on trust for sale must contain the like power, if any, to appoint new trustees as is contained in the settlement of the proceeds of sale, and this power must be exercised by a separate deed from that appointing trustees of the money settlement: T. Act, 1925, s. 35; the trustees must be the same for both instruments: L. P. Act, 1925, s. 24.

Provisions to be inserted in the money settlement.

The money settlement should contain a recital of the conveyance upon trust for sale, and a declaration of the trusts of the proceeds of sale, and the rents and profits until sale. It is usual, also, where land is conveyed on trust for sale by a deed of even date, to give the trustees a power to purchase land with any of the money subject to the trust. In this case s. 32 of the L. P. Act, 1925 (implied trust for sale), will apply, and the land, when purchased, will be conveyed on trust for sale with power to postpone the sale, whether or not the money was liable under L. P. Act, 1925, s. 28, to be invested in land to be held on trust for sale.

Conveyance of land purchased under a power contained in a money settlement.

Where land is purchased under a power in a personalty settlement it should be conveyed on trust for sale in a similar way, or where there is already a conveyance on trust for sale it may be conveyed by reference to the trusts in that deed.

No applications to the court for leave to exercise powers.

A person entitled to the income under a personalty settlement can no longer apply to the court for leave to exercise the statutory powers as was the case under S. L. Act, 1884, s. 7. This scheme has become unnecessary because the statutory powers are made exercisable by the trustees for sale. If, however, they refuse to sell or to exercise their statutory powers or to delegate their powers of leasing and accepting surrenders of leases, then any person interested may apply to the court for an order directing the trustees either to sell, or to exercise a power or to delegate: L. P. Act, 1925, s. 30.

Remedies of the beneficiaries against trustees for sale.

Consents to dealings by trustees for sale.

Under this section if any requisite consent to a transaction cannot be obtained, the court may make an order directing the transaction to be carried out.

So far as a purchaser is concerned, he will never have to join more than two persons in a conveyance, mortgage, lease, &c., to consent to the transaction being carried out by the trustees for sale: *ib.*, s. 26. This, with the restriction on the number of trustees (T. Act, 1925, s. 34), will secure that in future an excessive number of persons will not be required to make title.

Order made before 1926 under S. L. Act, 1884, s. 7.

Where before 1926 an order has been made authorising a person entitled to the income under a personalty settlement to exercise the statutory powers, this operates as if the powers had been delegated to him by the trustees for sale: *ib.*, s. 29 (4). It extends to all the powers given him by the order, not merely the power of leasing and accepting surrenders: *Re Lady Francis Cecil's Sett.* (1926), W. N. 138.

Meaning of "trust for sale."

A "trust for sale" in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale: L. P. Act, 1925, s. 205 (1) (xxix); S. L. Act, 1925, s. 117 (1) (xxx). The word "binding" does not mean that when the trust is executed the conveyance must of necessity "over-reach" every equitable interest (*e.g.*, a jointure as was held in the special case of *Re Leigh's S. E.* (1926), W. N. 191; Article in 70 Sol. J. 749, 769). It is sufficient if it creates an immediate notional conversion into money; it must be effective, a person must not have power as in *Re Goodall* [1909], 1 Ch. 440, to declare that the land shall not be sold during the subsistence of the trust, nor must it be construed as in *Re Hotchkys* (1886), 32 Ch. D. 408, as a mere power of sale.(*c*)

(iii) *Where a Mortgage Debt is to be Settled.*

Settlement of mortgage debt.

As in the case of the settlement of land as personal estate so in the settlement of a mortgage debt, the beneficial interests should be kept off the title to the land forming the security. Whether or not this is effectually done a purchaser will not be concerned with the trusts: L. P. Act, 1925, s. 113.

On marriage.

(1) Where the mortgage debt is settled *in contemplation of marriage* this object is effected by two documents:—

First, a transfer to trustees, in which the mortgage debt is, in consideration of the marriage (which consideration should be expressed), assigned upon the trusts declared by a deed of even date (the money settlement) and the mortgage term (if any) is conveyed subject to the existing right of redemption: L. P. Act, 1925, s. 114. The intended marriage is recited and made

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Effect of Amending Act on trusts for sale.

(*c*) A contrary view, as regards S. L. Act, 1925, s. 20 (1) (viii), appears to have been taken in *Re Leigh's S. E.* (1926), W. N. 191, a special case which was decided before the L. P. (Amend.) Act, 1926, was passed. That Act, in amending S. L. Act, 1925, ss. 1 and 3, makes it clear that the S. L. Act provisions relating to "settlements" and consequently to "settled land" are not to apply when the land becomes subject to trust for sale, so as to prevent trustees for sale, if they are unable to over-ride it, which will seldom, if ever, be the case, from selling subject to a family charge. The word "binding" was inserted in S. L. Act, 1925, s. 20 (1) (viii), to confirm the special decision in *Goodall's Case*, and to avoid any further extension of the principle there laid down. *Semble*, the words "until sale of the land" in para. (viii) have now been repealed by necessary implication. All trusts for sale are now "binding" within *Leigh's Case:* L. P. Act, 1925, s. 2 (2) (as amended), a subsequent approval of the trustees is sufficient, where any approval is required.

the consideration for the transfer. The transfer constitutes a separate trust deed from the money settlement and should contain a separate power of appointing new trustees corresponding with the power in the money settlement. When this power is exercised the new trustees are appointed and the mortgage transferred by the same instrument.

Secondly, a money settlement, in which the trusts of the mortgage money are declared.

Mortgage in favour of trustees.

Similar arrangements are made where a mortgage is created *de novo* in consideration of the marriage in favour of the trustees; in this case wide powers are frequently reserved to the owner of the right of redemption.

Investment on mortgage after the date of the settlement.

(2) Where a mortgage debt is, after the settlement has been on foot for some time, taken as an investment by trustees of a money or a realty settlement they advance the money out of the trust fund or out of the capital money. No reference should be made to the marriage or the settlement, and no power of appointing new trustees should be inserted in the transfer. On the face of it, the transfer or mortgage is made to the trustees as individuals on a joint account or simply as individuals relying on L. P. Act, 1925, s. 111. When new trustees of the settlement are appointed the mortgage is transferred to them in the ordinary form, but a recital is inserted to the effect that the transferees are entitled to the debt in equity on a joint account. This recital keeps the trusts off the title.(*d*)

SECT. II.—*Realty or Strict Settlements.*

Realty or strict settlements.

Division into two classes.

Realty settlements may be divided into two main classes. The first, where the settlor is seised in fee simple in possession and no previous settlement is in existence (the occasion for such a settlement is generally a marriage); the second, where the land is subject to the limitations of an existing settlement and the tenant for life and tenant in tail disentail and relimit the estate. The second class is called a resettlement. In view of the stamp imposed by Fin. (1909-10) Act, 1910, s. 74, and the consequential costs of valuing the land, resettlements of land are very generally postponed till the tenant in tail marries, or can be made by Will.

Stamp on voluntary settlements.

Scheme for evading heavy stamp duties on a voluntary settlement.

It is possible where there is sufficient capital money and investments in hand to evade the heavy £1 *ad valorem* stamp

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(*d*) Dart, 7th ed., 17. The 10*s*. stamp on the transfer, which must be adjudicated, does not bring the trusts on the title: L. P. Act, 1925, s. 112. The section is retrospective.

duty payable in respect of land by adopting the following scheme :—

(1) By the disentailing assurance limit the freeholds upon such trusts as the father and son shall by deed jointly appoint and, in default, upon such trusts as the survivor shall, for the purpose only of making the same devolve with the capital money and investments after mentioned, by deed or Will appoint and in default upon the trusts of the old settlement. Limit the capital money and investments upon such trusts as the father and son shall by deed jointly appoint and, in default, upon the trusts subsisting under the old settlement.

(2) If not already the case, appoint the persons who are to act as S. L. Act trustees of the resettlement to be trustees of the old settlement and see that all the capital money and investments are transferred to and placed in their names before the new resettlement is executed.

(3) By the resettlement appoint that the capital money and investments shall be held by the trustees (in whose names they have been placed as trustees of the old settlement) upon trust to lay out the same in the purchase of land to be conveyed and settled on the new trusts required.

(4) Prepare a separate draft resettlement of the land limiting the same upon the trusts of the resettlement of the capital money. This draft will contain a recital of an intended marriage of the son, the wife's name of course being left in blank.(*e*) Where the first life interest is to be taken by the son a vesting instrument is also required.

(5) Father and son to execute an agreement under hand only, so as not to be capable of taking effect as an appointment under the powers reserved by the disentailing assurance, the trustees also being made parties, to execute their powers of appointment and resettle the land to devolve on the trusts of the resettlement of the capital money in the following events—

(a) If the son marries in the lifetime of the father then under the joint power in accordance with the draft resettlement which will be referred to;

(b) If the son survives and marries after the death of the father then under his power by deed as survivor;

(*e*) The son's marriage would be the consideration for the resettlement of the land by father and son within s. 74, because the assets settled belong to the son, the father merely taking back his life estate and powers to create family charges.

(c) If the son survives and does not marry, then under his Will by virtue of the power;

(d) If the father survives, the son not having married, then by the father under his Will;

(e) Also to exercise the powers if and when any further capital money arises under the old settlement in respect of such capital money.

The agreement should also contain such other provisions as the circumstances require, including an agreement by father and son not to do anything which would operate to prevent their exercising their powers in the manner agreed, but without prejudice to the father's powers under the S. L. Act.

(6) Wills to be executed by both father and son making the requisite appointments in the event of the resettlement not being carried out by deed.

Vesting instruments.

Whenever a realty settlement is executed, it must be seen that a vesting instrument is in force which shows that the legal estate is vested in the tenant for life, who are the S. L. Act trustees, refers to any powers, additional to those conferred by the S. L. Act, 1925, for dealing with the settled land in favour of purchasers, mortgagees and lessees, and states the name of the person who has power to appoint new trustees of the settlement.

Appointment of jointure and portions term.

Again, on a marriage, settlements are made by appointing a jointure and an equitable portions term under powers contained in an existing settlement or resettlement.

(i) *Where the Settlor is seised in Fee Simple and no previous Settlement is in existence.*

Where settlor seised in fee simple and no existing settlement.

An example of this class is a settlement executed on the marriage of the settlor. The following is a simple form:—

(1) Parties.

(2) Recitals of the intended marriage, the vesting deed of even date in favour of the settlor, and agreement for settlement.

(3) Limitations. These are usually—

(a) Rentcharge to wife during joint lives of husband and wife by way of pin-money;

(b) Life interest to husband;

(c) Jointure to wife;

(d) Portions term for raising portions for younger children and their issue;

(e) Remainders in tail male to first and other sons successively according to seniority;

(f) Ultimate remainder to husband in fee simple.

(4) Provisions extending the powers conferred by the S. L. Act.

(5) Appointment of trustees for the purposes of the S. L. Act.

(6) Power for tenant for life to appoint new trustees.

In the above case, a vesting deed must be executed, declaring that the land, of which the settlor is seised in fee simple, is held by him on the trusts of the settlement of even date and complying with the provisions of S. L. Act, 1925, s. 4.

(ii) *Resettlements.*

Resettlements.

In resettling an estate the primary object of the practitioner has in the past been to carry out the intention of the parties in such a way that the tenant for life for the time being in possession would be able to exercise all the powers conferred by the S. L. Act and to make a good title to the land without the concurrence of other persons and without the appointment of trustees for the purposes of the S. L. Act of any compound settlement.

Trustees of the compound settlement must be employed.

All that is now wanted for this purpose is to employ the S. L. Act trustees of any compound settlement that may subsist or will come into force when the resettlement is made. These trustees must be made use of: S. L. Act, 1925, s. 1 (1), proviso. If it is not desired that they should act, then the persons who are to act should be appointed to be the trustees of the prior instruments *before* the resettlement is executed. There can now be very few cases where there are not subsisting trustees of a compound settlement.

Who become S. L. Act trustees.

(1) In *ib.*, s. 30, a list is given of the persons who become trustees.

(2) Under *ib.*, s. 31, the trustees (if any) of a prior instrument become the S. L. Act trustees of the compound settlement consisting of the prior and the subsequent instruments. If there are no trustees of the prior instrument, then under the amendment of that section in L. P. (Amend.) Act, 1926, Sch., the trustees of the instrument under which there is a tenant for life or statutory owner become the S. L. Act trustees of the compound settlement till (if at all) other trustees are appointed in their place.

(3) Trustees or their successors remain S. L. Act trustees of a settlement so long as it subsists: *ib.*, s. 33. And a settlement

" subsists " so long as any limitation charge or power of charging remains on foot as well as during a minority : *ib.*, s. 3; but a " settlement " determines when the land becomes subject to a trust for sale : L. P. (Amend.) Act, 1926, Sch.

Release or relimitation of family charges.

Where family charges (*e.g.*, jointures and portions) are subsisting under an existing settlement, it may still be very convenient to relimit them by the new settlement by way of substitution so far as may be of the old family charges. Now that trustees of the compound settlement must always be employed, it cannot be said that this is any longer essential; still, if and when releases are executed, the substituted charges take effect and the old settlement comes to an end; this tends to simplify matters by reducing the number of documents which together create the settlement.

Disentailing assurance.

It will be still found desirable where a disentailing assurance is executed with a view to a resettlement to limit the land upon such trusts as the tenant for life and tenant in tail jointly appoint, and in default of appointment upon the trusts of the existing settlement so as to restore them. This enables the joint power to be exercised in the new settlement. Moreover, such a disentailing assurance, by not creating any new interest, does not attract the heavy *ad valorem* duties imposed by s. 74 of the Fin. (1909-10) Act, 1910.

Stamp duties.

Restoration of life interests, &c.

Restoration, or more properly the continuation (without destruction) of life or other interests, whether by a disentailing assurance or a resettlement, is expressly authorised for all purposes by S. L. Act, 1925, s. 22; such restoration in a resettlement does not prevent the tenant for life from exercising any additional powers under the resettlement which he could have exercised if he had taken his life interest under the resettlement: *ib.* This section is made retrospective by *ib.*, 4th Sch., para. 8.

As trustees with a *power* of sale exercisable with the consent of a person entitled to rents and profits by virtue of the instrument creating the power remain S. L. Act trustees whatever happens during the subsistence of the settlement: *ib.*, s. 33; it is no longer necessary to keep alive the life interest in order to retain S. L. Act trustees. Nor is it necessary to keep alive the old life interest in order to retain the statutory powers of a tenant for life under the old settlement: *ib.*, s. 104. There may, however, be other powers annexed to the old life interest which it is expedient to retain, hence on this account the practice of restoring life interests is likely to be retained; at any rate it makes it clear that the tenant for life can exercise any additional powers under the resettlement.

Death duties.

It was formerly the practice to restore the old life interest to prevent a question arising whether estate duty was not payable on the death of the tenant for life which would not otherwise become payable till the death of the tenant in tail under the old settlement (*e.g.*, where in the case of personalty, probate or account duty, or in the case of any property, estate duty had been previously paid during the subsistence of the settlement: see Austen-Cartmell, 5th ed., 3), but in view of the decision in *Parr* v. *A.-G.* [1926], A. C. 239; 95 L. J. K. B. 417, this may no longer be a valid reason for restoring a life interest. It is submitted that the decision in *Parr* v. *A.-G.*, that the life interest had not been destroyed, was clearly right. But it is difficult to see how, contrary to the former practice, estate duty became payable as if a new life interest had been created.

SECT. III.—*The powers and liabilities of tenants for life* (*f*) *of settled land as regards waste, leases, sales, exchanges, partitions, and improvements and the provisions of the Settled Land Acts in reference to these and other matters.*

Waste.

Tenant for life with or without impeachment of waste.

It is usual in a settlement to add the words "without impeachment of waste" after the limitation of a life estate. It will be convenient, therefore, in this place to explain the powers and liabilities of a tenant for life as regards waste—(1) when he is impeachable for waste; and (2) when he is not.

Liability of tenant for life as regards timber.

A tenant for life impeachable for waste (*g*) cannot cut timber of his own authority except for the ordinary reparation of buildings and fences. Any timber improperly cut down by him, or blown down by the wind, belongs to the owner of the first vested estate in fee or in tail, and, accordingly, the whole of the proceeds will be invested and the income only paid to the

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(*f*) The expression "tenant for life" includes the limited owners who, under S. L. Act, 1925, s. 20, have the powers of a tenant for life: *ib.*, s. 117 (1) (xxviii), but does not include the "statutory owners" who have the powers (*ib.*, ss. 23, 26), when there is no tenant for life.

(*g*) A devise to A. for life "with full and absolute power over all my property" does not render A. dispunishable for waste: *Pardoe* v. *P.* (1900), 82 L. T. 547.

tenant for life.(*h*) Nor can he cut young trees which, if allowed to grow, would become timber, unless such cutting is necessary for the growth of other timber in the same wood or plantation: *Honywood* v. *H.* (1874), L. R. 18 Eq. 306; 43 L. J. Ch. 652.

Ripe timber.

But where there is on the settled land timber ripe and fit for cutting he may, under the S. L. Act, 1925, s. 66, cut and sell such timber with the consent of the trustees or under an order of the court, and in that case three-fourths of the net proceeds are to be set aside as capital money, and the other one-fourth goes as rents and profits.

What is timber.

Oak, ash and elm are timber if twenty years old, and if not too old to have any useable wood in them. By local custom other trees may also be timber, as beech in Buckinghamshire.

Exception in case of a timber estate.

The rule preventing a tenant for life from cutting timber is subject to an exception in the case of a timber estate, *i.e.*, an estate which is cultivated for the produce of saleable timber, and where the timber is cut periodically in due course, the larger trees being removed to promote the growth of younger ones. Where such a usage exists on a particular estate, it is not waste for the tenant for life to comply with it, and the produce of the timber cut by him in due course belongs to him.(*i*)

As to ornamental trees not being timber.

It is waste to destroy ornamental trees, though not timber, or trees planted for the shelter of houses or banks, or fruit trees in a garden or orchard, or stools of underwood; but, with these exceptions, a tenant for life may cut down trees which are neither timber nor likely to become timber, and the proceeds will belong to him.(*i*)

Equitable waste.

Previously to the Jud. Act, 1873, a tenant for life "without impeachment of waste" had at law an unlimited power to commit waste, but a court of equity would not permit him to make an unconscionable use of the legal power, and would restrain him from such acts as the following, which were therefore termed equitable waste, viz.: the pulling down of the mansion house or farm houses: *Aston* v. *A.* (1749), 1 Ves. Sen. 264; cutting timber planted or left standing for ornament or shelter of the mansion house; (*j*) destroying saplings or young trees

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(*h*) *Bewick* v. *Whitfield* (1734), 3 P. Wms. 267. This is so, though there may be an intermediate interest limited to a person for life without impeachment of waste. As to capital not directly arising under the S. L. Act powers: S. L. Act, 1925, s. 81.

(*i*) *Honywood* v. *H.*, *supra*; *Dashwood* v. *Magniac* [1891], 3 Ch. 306; 60 L. J. Ch. 809.

(*j*) *Rolt* v. *Somerville* (1737), 2 Eq. Ca. Abr. 759; *Weld-Blundell* v. *Wolseley* [1903], 2 Ch. 664; 73 L. J. Ch. 45.

not fit to be cut for purposes of timber: *Chamberlayne* v. *Dummer* (1782), 1 Bro. C. C. 166; cutting underwood of insufficient growth: *Brydges* v. *Stephens* (1821), 6 Madd. 279; or grubbing up a wood so as to destroy it altogether: *Aston* v. *A.*, *supra.* Under L. P. Act, 1925, s. 135 (reproducing Jud. Act, 1873, s. 25 (3)), a tenant for life without impeachment of waste has no legal power to commit equitable waste.

Practice of court as to the cutting of ornamental timber when injurious to other trees.

The court will, on the application of a tenant for life without impeachment of waste, order ornamental trees to be cut, if they injure or impede the growth of other trees which are of essential importance for ornament or shelter, and in that case the proceeds of the sale belong to him. If he, of his own authority, cuts ornamental trees which the court would have ordered to be cut, or if any ornamental timber is blown down, the proceeds belong to him: *Baker* v. *Sebright* (1879), 13 Ch. D. 179; 49 L. J. Ch. 65.

Powers of a tenant in tail as regards waste.

A tenant in tail in possession has all the powers of a tenant in fee simple as regards waste; this is the case even where the tenant in tail is prohibited by a special Act from barring the entail.(*k*) A tenant in tail after possibility of issue extinct, and a tenant in fee with an executory devise over in the event of his dying without leaving issue, have respectively the same privileges as a tenant for life without impeachment of waste.(*l*) A tenant for life is not liable for permissive waste: *Re Cartwright* (1889), 41 Ch. D. 532; 58 L. J. Ch. 590.

Permissive waste.

SECT. IV.—*Settled Land Act*, 1925.(*m*)

Management during minorities or a contingency.

Under S. L. Act, 1925, s. 102, either trustees specially appointed for the purpose, or if none, the S. L. Act trustees are, during a minority, given the powers which would be incidental to the estate of tenant for life of full age. These powers correspond to those formerly given by Conv. Act, 1881, s. 42. It is no longer necessary to appoint trustees specially for this purpose, the mere appointment of S. L. Act trustees will be sufficient. This section also applies where a person is contingently entitled to land.

Destination of accumulations.

The provisions as to maintenance and accumulation of surplus

(*k*) *A.-G.* v. *Marlborough* (1818), 3 Madd. 498, 532; *Re Bolton Estates Acts* [1903], 2 Ch. 461, 472; 72 L. J. Ch. 605.

(*l*) *Williams* v. *W.* (1808), 15 Ves. 419, 427; *Turner* v. *Wright* (1860), 2 D. F. & J. 234; 29 L. J. Ch. 598; *Re Hanbury* [1913], 2 Ch. 357; 82 L. J. Ch. 428.

(*m*) For a full explanation of this Act, as amended: 2 Wolst. & Cherry's Conv. Statutes, 11th ed.

rents and profits and as to the destination of accumulations are now placed in T. Act, 1925, s. 31 ; it will not, as a rule, be necessary to provide, by way of variation of that section, for the destination of the statutory accumulations.

Statutory powers during a minority.

The powers of a tenant for life during a minority will be exercisable by the statutory owners (generally the S. L. Act trustees) or by the personal representatives in whom the legal estate may be vested under S. L. Act, 1925, s. 23 (during a contingency) or under *ib.*, s. 26, in other cases.

Powers given by S. L. Act to a tenant for life.

Under the S. L. Act every tenant for life under a settlement may sell the settled land or any easement, right or privilege of any kind over or in relation to the same, may extinguish manorial incidents, may make exchanges and grant leases—in the case of a building lease for nine hundred and ninety-nine years, of a mining lease for one hundred years, of a forestry lease for nine hundred and ninety-nine years, and of any other lease for fifty years—and may raise money for equality of exchange or for discharge of incumbrances or for paying for improvements, for extinguishing manorial incidents, for redeeming or commuting certain claims, by mortgage, subject as to all the powers to the conditions prescribed by the Act.

Restriction as to mansion house partly removed.

Formerly the principal mansion house, if any, on any settled land, and the pleasure grounds and park and lands usually occupied therewith, could not be disposed of by the tenant for life without the consent of the trustees or an order of the court, unless the settlement otherwise provided. But as regards settlements coming into operation after 1925, the tenant for life will be able to dispose of it without any such consent or order unless the settlement otherwise provides : *ib.*, s. 65.

New powers.

Transactions generally.

Improvements.

Many new powers, in addition to those above mentioned, have been conferred by the Act, but the most important to note is that (s. 64) which gives powers for the tenant for life or statutory owner to effect any reasonable transaction, not otherwise authorised, with the leave of the court ; this section does not, however, extend the power to effect improvements on the settled land. The new code for this purpose is now contained in Pt. V of the Act. There are three classes of authorised improvements, namely :—

(1) Those the costs of which are not liable to be replaced by instalments ;

(2) Those which the trustees or the court *may* require to be so replaced ; and

(3) Those which *must* be replaced by instalments.

It is no longer necessary to have a formal scheme of intended improvements.

Capital money.

Part III of the Act contains the code relating to the investment or other application of capital money, and it must be noted that the money, unless paid into court, must be paid either to a trust corporation or to not less than two trustees: ss. 94, 95. No contracting out is authorised. Where different estates are settled on similar limitations express provision is made by s. 91 as to application of capital money arising from any one of the estates.

Tenant for life may, with leave of court, sell settled heirlooms.

A tenant for life may, with the leave of the court, under s. 67, sell personal chattels settled as heirlooms and purchase others.

Who are tenants for life or statutory owners.

In determining who are tenants for life or statutory owners, ss. 19 to 29 must be considered, the main new points to note are:—

(1) That if the land is "settled land" there will always be some person to make title, for if there is no tenant for life, or the legal estate is not vested in personal representatives, then under s. 23 the S. L. Act trustees (there being no other persons specially nominated for the purpose) will be able to exercise the powers.

The question as to the person to exercise the powers must be considered every time that a vesting deed, a vesting assent, or a vesting order by the court is made.

(2) That the legal estate in the settled land cannot be vested in an infant.

(3) That even if a tenant for life parts with his beneficial interest and an order is made under s. 24 he will still retain the legal estate as trustee of the land, the S. L. Act trustees will execute the powers as his statutory attorneys.

(4) Similarly a lunatic will retain his legal estate, his committee or receiver will convey in his name: s. 28; this has always been the practice in regard to settled land.

(5) Even in the case of charitable, ecclesiastical and public trusts special provision (s. 29) is made for the exercise of the powers, though this matter is strictly outside the general scope of the Act. This section shows that the land is not held on trust for sale, unless an express trust for sale is created.

Independently of the S. L. Act, trustees for sale (*i.e.*, trustees holding on trust for sale, not trustees with a mere power of sale) can exercise the statutory powers: L. P. Act, 1925, s. 28; so also can personal representatives: Ad. of E. Act, 1925, s. 39. When land becomes subject to a trust for sale (*e.g.*, when it comes to be held in undivided shares: S. L. Act, 1925, s. 36; or an absolute power subject to a family charge: *ib.*, s. 20, vests his legal estate in trustees for sale: *ib.*, ss. 1 and 3, as amended by L. P. (Amend.) Act, 1925, Sch.), that takes the land out of the scope of the S. L. Act, and it becomes subject to the provisions in L. P. Act, 1925, ss. 2 (as amended by L. P. (Amend.) Act, 1925, Sch.), 3, 23 to 36, which are specially applicable to trusts for sale.

Effect of trust for sale.

Who are S. L. Act trustees.

The question who are S. L. Act trustees has been dealt with, *supra*; the answer can be found in S. L. Act, 1925, ss. 30 to 34. It will be material every time that a vesting deed, vesting assent or vesting order is made, when, if there is a compound settlement, the S. L. Act trustees thereof must be nominated as the persons to act: *ib.*, s. 1 (1) proviso.

Other points arising on the S. L. Act, 1925 (as amended) have been noted against the forms and precedents bearing thereon.

SECT. V.—*Settlements of registered land.*(*n*)

Strict settlements.

The Land Registration Act, 1925, ss. 86 to 90 and 92, and L. R. R., 1925, rr. 56 to 59, 99 to 106, 133, 144, 168, 171, 229; Forms in Sch., Nos. 9 to 11, 21 to 24, 57, 75, contain the main provisions as to the registration of settled land (not being land held on trust for sale), as to how registered land is to be made subject to a settlement, and as to the restrictions to be entered on the register to protect rights under the settlements.

Estate owner to be registered.

Speaking generally, the only estates capable of registration are legal estates: L. R. Act, 1925, s. 2; the tenant for life or statutory owner will be the trustee of the legal estate in the settled land, and will accordingly be registered as proprietor, save where the legal estate is vested in personal representatives. The register keeps the minor or equitable interests off the title, hence, provided that the legal estate is transferred to or vested in the tenant for life or statutory owner, the need for vesting deeds or assents is not quite on the same footing as in the case of unregistered land; but, where necessary, powers for this purpose are prescribed: Forms Nos. 21 (transfer in lieu of a vesting instrument), 22 (transfer to statutory owners), 23 (transfer

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(*n*) See, generally, Brickdale and Stewart Wallace on the L. R. Act, 1925.

creating a settlement where the tenant for life settlor is the proprietor), 24 (transfer where the land is acquired with capital money), 57 (vesting assent by personal representatives).

Settlements on trust for sale.

Where the settlement is by way of trust for sale the trustees for sale will be the only persons to be registered: L. R. Act, 1925, s. 94; L. R. R., 1925, r. 134; Form in Sch. No. 10. As the register has the effect of keeping the trusts off the title, the trust for sale may be declared by the same deed by which the trusts of the proceeds are declared. Where the trustees for sale are not already the registered proprietors, the requisite transfer or assent must be made in their favour to enable them to be registered.

On settlement of registered land, first tenant for life must be registered as proprietor.

A strict settlement of registered land will, with the addition of the recital of the registration or of the registered transfer of even date, be in the same form as if the land were unregistered. If the settlor is to be the first tenant for life or statutory owner, he will remain the registered proprietor and no instrument of transfer is necessary, but application must be made for entry of the requisite restriction. If not, he should transfer the land in the prescribed manner to the first tenant for life or statutory owner.

Restriction to be registered. Extended powers.

The restriction will prevent any registered disposition not in accordance with the powers vested in a tenant for life or statutory owner by the S. L. Act, 1925, as extended (if at all) by the settlement; references in a restriction to the S. L. Act powers will include powers taking effect as if conferred by the S. L. Act: L. R. R., 1925, r. 58 (2). Powers relating to dealings with registered land in favour of a purchaser, mortgagee, &c., on whomsoever conferred, are made exercisable as if conferred on the tenant for life or statutory owner: S. L. Act, 1925, ss. 108–9.

Restriction to be modified on change of trustees.

On an appointment of new trustees of the settlement, application should be made to alter the terms of the registered restriction by substituting the name of the new trustee for the retiring or deceased one: L. R. R., 1925, Sch., Form No. 77.

SECT. VI.—*Settlements by infants.*(o)

Infant may make settlement on marriage with leave of court.

The Infant Settlements Act, 1855, authorises any male infant over twenty years of age, and any female infant over seventeen, with the leave of the court, to make a valid settlement, or contract for a settlement, of "all or any part of his or her property or property over which he or she has a power of appointment, whether real or personal, and whether in possession, reversion, or expectancy." But this enactment does not apply to powers in regard to which it is expressly declared that they shall not be exercised by an infant, and any appointment or disentailing assurance executed by an infant tenant in tail is void if the infant dies under twenty-one. A married infant can give valid receipts for income and for accumulations made during the previous minority: L. P. Act, 1925, s. 21. The provision as to vesting of accumulations takes effect subject to any settlement made under the Act of 1855: T. Act, 1925, s. 31 (2) (i).

(o) See generally on this subject, Vaizey on Settlements, p. 30, *et seq.*

How far void.

Legal estate not to be vested in an infant.

There is an express saving of the Act of 1855 in S. L. Act, 1925, s. 27 (3), provided that a legal estate in land is not vested in an infant.

Cases on the construction of the Infant Settlements Act.

A settlement may be made under the Act of 1855 after the marriage has taken place: *Re Sampson and Wall* (1884), 25 Ch. D. 482; 53 L. J. Ch. 457; and if a female marries under seventeen, the settlement may be made on her attaining that age: *Re Phillips* (1887), 34 Ch. D. 467; 56 L. J. Ch. 337. The settlement may be extended to the wife's after-acquired property, as being property "in expectancy" within the meaning of the Act.(*p*) An appointment made under the Act by a female infant, not being a tenant in tail, to the trustees of the settlement upon trusts which fail for want of objects, creates a resulting trust for the appointor, so that on her death under full age the appointed fund under the old law went to her husband as her administrator: *Re Scott* [1891], 1 Ch. 298; 60 L. J. Ch. 461; and on her death after 1925 would go to her new statutory next of kin under the Ad. of E. Act, 1925.

Jurisdiction of court as to settlement of ward's property on her marriage without leave.

It has been long settled that if a man marries a ward of court without the leave of the court, he is liable to be committed to prison until he executes a proper settlement of the lady's property, and that in a case of intentional contempt of court the settlement will be so framed as to exclude him from all interest in that property. But the court has no jurisdiction to compel a ward to make a settlement of his or her own property.(*q*)

Propriety of marriage.

Before approving a settlement under the Infant Settlements

(*p*) *Re Johnson* [1891], 3 Ch. 48; 60 L. J. Ch. 499; but *cf. Allcard* v. *Walker* [1896], 2 Ch. 369; 65 L. J. Ch. 660.

(*q*) *Seaton* v. *S.* (1888), 13 A. C. 61; 57 L. J. Ch. 661; *Re Leigh* (1888), 40 Ch. D. 290; 58 L. J. Ch. 306.

Act the court will not direct an inquiry as to the propriety of the contemplated marriage: *Re Dalton* (1856), 6 D. M. & G. 201; 25 L. J. Ch. 751, unless the infant is a ward of court.

Settlement by infant not under Act voidable.

A settlement made by an infant without the leave of the court under the Act is not void, but voidable,(*r*) *i.e.*, it is binding unless the infant elects to avoid it (*s*) within a reasonable time after coming of age.(*t*)

Deed confirming a voidable settlement.

If the wife on coming of age elected to affirm it, and did so by deed, the deed never had to be acknowledged, though she was married before 1883.(*u*)

Whether and to what extent settlement by husband bound property of infant wife.

Where the intended wife was an infant entitled to personal estate (including chattels real) which, but for the M. W. P. Act, 1882, would under the old law have passed to the husband on the marriage, an effectual settlement could formerly be made of it by the husband without the aid of the Infant Settlements Act, 1855; but the husband now could only bind the chattels personal, his first charge for £1,000, his life interest and possible ultimate interest under Ad. of E. Act, 1925, s. 46. And if the infant's interest was a reversionary interest in personalty a settlement made by the husband alone would have been effectual in the event of its falling into possession during the coverture, or of the husband surviving the wife. But the settlement would not have been binding on the wife if the husband died before the property fell into possession.(*v*)

Effect of M. W. P. Act, 1907, s. 2.

Now, under the M. W. P. Act, 1907, s. 2, a settlement or agreement for a settlement made after 1907 by the husband or intended husband, whether before or after the marriage, respecting the property of any woman he may marry or have married, is not to be valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age. If she dies an infant any covenant or disposition by her husband contained in the settlement or agreement is to bind or pass any interest

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(*r*) *Burnaby* v. *Equitable, &c., Socy.* (1885), 28 Ch. D., at p. 419, *et seq.*; 54 L. J. Ch. 466.

(*s*) *Smith* v. *Lucas* (1881), 18 Ch. D. 531; *Cooper* v. *C.* (1888), 13 A. C. 88; *Duncan* v. *Dixon* (1890), 44 Ch. D. 211; 59 L. J. Ch. 437; *Viditz* v. *O'Hagan* [1900], 2 Ch. 87; 69 L. J. Ch. 507.

(*t*) See *Edwards* v. *Carter* [1893], A. C. 360; 63 L. J. Ch. 100; *Carnell* v. *Harrison* [1916], 1 Ch. 328; 85 L. J. Ch. 321.

(*u*) *Wilder* v. *Pigott* (1882), 22 Ch. D. 263; 52 L. J. Ch. 141; *Re Hodson* [1894], 2 Ch. 421; 63 L. J. Ch. 609; see now L. P. Act, 1925, s. 167.

(*v*) *Stevens* v. *Trevor-Garrick* [1893], 2 Ch. 307; 62 L. J. Ch. 660; *Buckland* v. *B.* [1900], 2 Ch. 534; 69 L. J. Ch. 648.

in any property of hers to which he may become entitled on her death and which he could have bound or disposed of if the Act had not been passed.(*w*)

SECT. VII.—*Settlements on behalf of Lunatics and Defectives.*

Under L. P. Act, 1925, s. 171, the Judge in Lunacy may direct a settlement to be made of a lunatic's property, or any part thereof or interest therein, provided that the lunatic is not an infant. This section is fully discussed in 1 Wolst. & Cherry, 11th ed., 428–32. The expressions "lunatic" and "defective" are defined in L. P. Act, 1925, s. 205 (1) (xiii). One of the main objects of the section is to prevent any injustice arising by reason of the change of the law of devolution of beneficial interests on a death affected by the Ad. of E. Act, 1925.

SECT. VIII.—*Voluntary dispositions, how far valid as against* (1) *subsequent purchasers,* (2) *creditors, and* (3) *the settlor himself and his representatives.*

Avoidance of conveyances of land made with intent to defraud subsequent purchasers.

(1) By L. P. Act, 1925, s. 173 (reproducing 27 Eliz. c. 4, as amended by Vol. Conv. Act, 1893), voluntary conveyances of land made with the intent to defraud a subsequent purchaser are made voidable at the instance of that purchaser. But no voluntary conveyance is deemed to have been made with intent to defraud by reason that a subsequent conveyance for value was made after 28th June, 1893: This meets *Doe* v. *Manning* (1807), 9 East. 59.

Under present law, the intention to defraud must be proved.

Under the present law, a voluntary conveyance of land is good against a subsequent purchaser for value, though he may have no notice of it, unless it can be shown that it was really made with a fraudulent intent.(*x*) If such intent is proved, but not otherwise, the conveyance will be liable to be set aside. In view of the bankruptcy law, resort is seldom had to this section to set aside a voluntary conveyance. The law is now, for practical purposes, the same for real and personal property.

Dispositions of land or chattels made with intent to defraud creditors voidable.

(2) By L. P. Act, 1925, s. 172 (reproducing, with slight amendments in regard to "good consideration," 13 Eliz. c. 5), all conveyances of property made with intent to defraud creditors are

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(*w*) As to the effect of this section, see note to Form No. 10 (Settlements Personal), p. 117, *infra*.

(*x*) *Re Kelleher* [1911], 2 Ir. R. 1; 1 Wolst. & Cherry, 11th ed., 433–4.

liable to be set aside at the instance of any person thereby prejudiced. A conveyance for valuable consideration and in good faith, or upon good consideration and in good faith to a person not having at the time of the conveyance notice of the intent to defraud creditors, is good.

Construction.

In order to come within the section, a deed must be made with intent to defraud creditors. If such an intent is clear the deed will be liable to be set aside, even if made for valuable consideration.(y) A voluntary deed will be presumed to be made with intent to defraud creditors, if that will be its necessary effect having regard to the amount of property included in it, and the amount of the settlor's liabilities at the time.(z)

Settlement of leaseholds.

A settlement of leasehold property to which a liability is attached is not a settlement for value, so as to be good on that account only : *Ridler* v. *R.* (1882), 22 Ch. D. 74 ; 52 L. J. Ch. 343.

Antecedent debt.

An antecedent debt does not constitute valuable consideration unless there is also a request to forbear to sue : *Glegg* v. *Bromley* [1912], 3 K. B. 474.

Subsequent creditors may come in.

If a deed is set aside as being void against creditors, the property comprised in it becomes assets for the payment of debts generally, so that subsequent creditors are entitled to participate in it : *Richardson* v. *Smallwood* (1822), Jac. 552.

Voluntary settlement may be set aside, if settlor about to engage in hazardous business.

A voluntary settlement may be set aside, though the settlor's assets, irrespective of what is included therein, may be sufficient to pay his debts at the date of the deed, if the settlor contemplated a state of things which might not improbably result in bankruptcy or insolvency, as if he were engaged or engaging in a hazardous or untried business, or incurring heavy liabilities : *Ex p. Russell* (1882), 19 Ch. D. 588 ; 51 L. J. Ch. 521 ; and a voluntary deed may be set aside at the instance of a subsequent creditor, though there may be no creditor whose debt was in existence at the date of the settlement.(a)

Clause determining life interest on bankruptcy

A voluntary settlement by a person not indebted at the time, and not in trade, but who many years afterwards embarked in does not invalidate voluntary settlement.

(y) *Holmes* v. *Penney* (1856), 3 K. & J. 90 ; 26 L. J. Ch. 179 ; 1 Wolst. and Cherry, 11th ed., 432–3.

(z) *Freeman* v. *Pope* (1870), L. R. 5 Ch. 538 ; 39 L. J. Ch. 689 ; *Re Holland* [1902], 2 Ch. 360, 381 ; 71 L. J. Ch. 518 ; see also *Edmunds* v. *E.* [1904], P. 362 ; 73 L. J. P. 97 ; *Ideal Bedding Co.* v. *Holland* [1907], 2 Ch. 157 ; 76 L. J. Ch. 441 ; *Carruthers* v. *Peake* (1911), 55 Sol. J. 291. The doctrine in the text is too well established to be shaken by the observations of Lord Esher, M.R., in *Ex p. Mercer* (1886), 17 Q. B. D. 290 ; 55 L. J. Q. B. 558.

(a) *Taylor* v. *Coenen* (1876), 1 Ch. D. 636 ; see also *Re Lane-Fox* [1900], 2 Q. B. 508 ; 69 L. J. Q. B. 722.

trade and became bankrupt, is not liable to be set aside merely because it contains a clause determining the settlor's life interest on bankruptcy : *Re Holland* [1902], 2 Ch. 360 ; 71 L. J. Ch. 518.

Consideration may be proved by extrinsic evidence.

A settlement which is in form voluntary may be proved by extrinsic evidence to have been made for a valuable consideration : *Pott* v. *Todhunter* (1845), 2 Coll. 76 ; *Re Holland, supra* ; and an instrument voluntary in its inception may by *ex post facto* matter cease to be voluntary in the hands of those who have given value on the faith of it, or if it has formed part of the inducement to a marriage.(*b*)

Saving clause, to whom it applies.

The saving in favour of purchasers for value without notice extends to the purchaser of any interest under the deed impeached, whether that interest be legal or equitable, and prevents the deed from being void against him.(*c*)

Marriage a valuable consideration.

Marriage is a valuable consideration, hence a settlement made previously to and in consideration of marriage in favour of the husband and wife and their issue is a settlement for valuable consideration, so as to exclude the above-mentioned section.(*d*) It must be made in good faith to come within the saving in s. 172.

Limitations in settlement in favour of collateral relations, *primâ facie* voluntary.

But a settlement made after marriage, unless in pursuance of a prior agreement : *Re Holland* [1902], 2 Ch. 360 ; 71 L. J. Ch. 518, or unless there is some other consideration, is voluntary. If an ante-nuptial settlement contains limitations in favour of collateral relations or strangers, such limitations are *primâ facie* voluntary ; so is a provision made by either party for a child by a former marriage, or an illegitimate child.(*e*) Again, a covenant in a marriage settlement will not be enforced in favour of volunteers.(*f*) Purported solemnisation of marriage within the prohibited degrees is not a marriage constituting a valuable consideration.(*g*)

Covenant to settle.

(*b*) *George* v. *Milbanke* (1803), 9 Ves., at p. 193 ; *Payne* v. *Mortimer* (1859), 1 Giff. 118 ; aff. 28 L. J. Ch. 716 ; 4 De G. & J. 447.

(*c*) *Halifax Bnkg. Co.* v. *Gledhill* [1891], 1 Ch. 31 ; 60 L. J. Ch. 181 ; and see *Re Slobodinsky* [1903], 2 K. B. 517 ; 72 L. J. K. B. 883.

(*d*) *Re Reis* [1904], 2 K. B. 769 ; 73 L. J. K. B. 929 ; aff. on another point, [1905], A. C. 442 ; 74 L. J. K. B. 918.

(*e*) *Re Cameron and Wells* (1887), 37 Ch. D. 32 ; 57 L. J. Ch. 69 ; *De Mestre* v. *West* [1891], A. C. 264 ; 60 L. J. P. C. 66 ; see also *A.-G.* v. *Jacobs Smith* [1895], 2 Q. B. 341 ; 64 L. J. Q. B. 605. These cases, and also some of the cases in the subsequent notes, were decided in regard to purchasers, but may be equally applicable to creditors.

(*f*) *Re D'Angibau* (1880), 15 Ch. D. 228 ; 49 L. J. Ch. 756 ; *Re Plumptre* [1910], 1 Ch. 609 ; 79 L. J. Ch. 340 ; *Re Pryce* [1917], 1 Ch. 234 ; 86 L. J. Ch. 383.

(*g*) *Phillips* v. *Probyn* [1899], 1 Ch. 811 ; 68 L. J. Ch. 401 ; *Neale* v. *N.* (1898), 79 L. T. 629.

Where limitations to collaterals are mixed up with those to children, the whole settlement will be upheld.

If a settlement, whether of the husband's or the wife's lands, contains limitations in favour of strangers to the marriage consideration (including in this expression children of a former or of a subsequent marriage), which are so mixed up with limitations in favour of persons within such consideration that effect cannot be given to the provisions in favour of those within the consideration without giving effect also to those in favour of the strangers, the whole settlement will be upheld.(*h*)

A slight consideration sufficient to support a post-nuptial settlement.

A post-nuptial settlement made before 1883 by husband and wife of the wife's property for her separate use for life, with remainder to the husband for life, with remainder to the children, has been held to be a settlement for valuable consideration, such consideration being the modification by the husband of his life interest in possession, and by the wife of her inheritance: *Re Foster and Lister* (1877), 6 Ch. D. 87; 46 L. J. Ch. 480.

But as regards property belonging to the wife for her separate use, or coming to her under the M. W. P. Acts, such a settlement would be by the wife alone, and therefore voluntary: *Shurmur* v. *Sedgwick* (1883), 24 Ch. D. 597; 53 L. J. Ch. 87.

Provisions of Bkcy. Act, 1914, as to voluntary settlements.

The rule by which voluntary settlements are void against creditors is extended by the Bkcy. Act, 1914, s. 42, which provides as follows:—

(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration,(*i*) or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed (*Shrager* v. *March* [1908], A. C. 402; 77 L. J. P. C. 105), to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children, of

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(*h*) *Clayton* v. *Wilton* (1818), 3 Madd. 302 n.; *Newstead* v. *Searles* (1737), 1 Atk. 264; *Mackie* v. *Herbertson* (1884), 9 A. C. 303.

(*i*) The release of a claim is sufficient to constitute a person "a purchaser for valuable consideration" within this section: *Re Pope* [1908], 2 K. B. 169; 77 L. J. K. B. 767; and see also on this section, *Sturmey's Trustee* v. *S.* (1913), 107 L. T. 718; *Re Macdonald* [1920], 1 K. B. 205; 88 L. J. K. B. 1226; *Re Collins* (1915), 112 L. T. 87; Dart, 7th ed., 942.

property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in bankruptcy, except in so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy, under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance), or any transfer of property made by the settlor in pursuance of such a covenant or contract, shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—

(a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

(b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor;

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the date of the bankruptcy.

(4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

Enactment does not apply to covenant to pay money.

This section, so far as it re-enacts s. 91 of the repealed Act of 1869, applies to settlements executed before as well as after the Act of 1883,(*j*) and in so far as it re-enacts s. 47 of the repealed Act of 1883 applies to settlements executed before 1915 as well as after 1914, but the new provisions only apply to settlements executed on and after the 1st January, 1915: s. 169. The section does not apply to a covenant for payment of a sum of money not specifically ear-marked.(*k*)

Donee under voluntary settlement can make a title within the ten years.

Notwithstanding the section, the donee under a voluntary settlement, selling within ten years after its date, can make a good title to a purchaser.(*l*)

(*j*) *Ex p. Dawson* (1875), L. R. 19 Eq. 433; 44 L. J. Bk. 49; *Ex p. Todd* (1887), 19 Q. B. D. 186; 56 L. J. Q. B. 431.

(*k*) *Ex p. Bishop* (1873), L. R. 8 Ch. 718; 42 L. J. Bk. 107; *Ex p. Cooper* (1885), 2 Morrell, 223.

(*l*) *Re Carter and Kenderdine* [1897], 1 Ch. 776; 66 L. J. Ch. 408; and see *Re Hart* [1912], 3 K. B. 6; *Re Shrager* (1913), 108 L. T. 346; *Re Branson* [1914], 3 K. B. 1086; 83 L. J. K. B. 1673; *Carter* v. *Hungerford* [1917], 1 Ch. 260; 86 L. J. Ch. 162.

The effect of an order setting aside a settlement under this section is to accelerate subsequent incumbrances.(*m*)

Voluntary covenants and settlements are binding on the settlor if complete, but not otherwise.

A voluntary disposition of property is valid against the settlor, but the disposition must be complete, *i.e.*, the settlor must have done everything which according to the nature of the property is necessary to be done on his part. Thus, if the legal owner of Consols, standing in his own name: *Beech* v. *Keep* (1854), 18 Beav. 285; 23 L. J. Ch. 539; or of bank shares transferable only by entry in the bank books: *Milroy* v. *Lord* (1862), 4 D. F. & J. 264; 31 L. J. Ch. 798; purports to assign such Consols or shares by deed, or if a person entitled to leasehold property purports to assign it by a writing not under seal: *Richards* v. *Delbridge* (1874), L. R. 18 Eq. 11; 43 L. J. Ch. 459; or if the owner of shares in a colliery signs an entry in the partnership books, to the effect that he agrees to transfer such shares, which entry is not sufficient to pass them according to the partnership articles: *Heartley* v. *Nicholson* (1875), L. R. 19 Eq. 233; 44 L. J. Ch. 277; or if the owner of railway stock hands over the certificate of such stock, saying, "These are yours," or using words to that effect: *Moore* v. *M.* (1874), L. R. 18 Eq. 474; 43 L. J. Ch. 617; in each of these cases the intended gift, if in favour of a volunteer, is inoperative.

On the other hand, a voluntary assignment by deed or writing of a legal or equitable thing in action,(*n*) or of a reversionary interest in stock standing in the name of a trustee,(*o*) or of money owing on a bill of sale: *Re Patrick* [1891], 1 Ch. 82; 60 L. J. Ch. 111; will be sustained, on the ground that the assignor has done all that he can, having regard to the nature of the property, to divest himself of his interest; nor is it necessary that notice of the assignment should have been given to the debtor or the trustee, the giving of such notice being an act within the province of the assignee rather than the assignor.

Voluntary agreement cannot be enforced, but voluntary declaration of trust good.

A voluntary agreement, whether by deed or writing, to make a disposition of property in favour of another cannot be enforced, and the voluntary assignment of a mere *spes successionis* can only operate as an agreement.(*p*) A voluntary declaration of

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(*m*) *Sanguinetti* v. *Stuckey's Bk.* [1895], 1 Ch. 176; 64 L. J. Ch. 181; *Re Farnham* [1895], 2 Ch. 799; 64 L. J. Ch. 717; and see *Lister* v. *Hooson*, [1908], 1 K. B., at p. 181; 77 L. J. K. B. 161.

(*n*) *Fortescue* v. *Barnett* (1834), 3 M. & K. 36; 3 L. J. Ch. 106; *Harding* v. *H.* (1886), 17 Q. B. D. 442; 55 L. J. Q. B. 462.

(*o*) *Kekewich* v. *Manning* (1851), 1 D. M. & G. 176; 21 L. J. Ch. 577.

(*p*) *Meek* v. *Kettlewell* (1843), 1 Ph. 342; 13 L. J. Ch. 28; *Re Ellenborough* [1903], 1 Ch. 697; 72 L. J. Ch. 218.

trust, being a complete transaction, is valid.(q) A declaration of trust of an interest in land must be in writing: L. P. Act, 1925, s. 53; but of any other property may be either in writing or by parol: *Ex p. Pye* (1811), 18 Ves. 140, 150. In some cases it has been sought to sustain, as valid declarations of trust, instruments purporting to be assignments, but which are incomplete as such. It is now well settled that the court will not treat an incomplete gift as if it were a declaration of trust.(r) Thus, an imperfect assignment of furniture by a husband to his wife by letters has been held void: *Re Breton's Estate* (1881), 17 Ch. D. 416; 50 L. J. Ch. 369. The true test is whether anything remains to be done by the donor to render the gift binding upon him: *Re Smith* (1901), 84 L. T. 835.

Effect of recital of ante-nuptial agreement.

A recital in a post-nuptial settlement that it was made in pursuance of an ante-nuptial agreement does not, independently of extraneous evidence, bind creditors seeking to impeach it as fraudulent under L. P. Act, 1925, s. 172, but is sufficient to satisfy: s. 53; *ib.*, as against the settlor himself, and to prevent him or any person claiming under him, including his trustee in bankruptcy, from resisting specific performance of a covenant contained in the deed on the ground that it is voluntary: *Re Holland* [1902], 2 Ch. 360; 71 L. J. Ch. 518.

What must be shown in order to support a voluntary deed as against settlor.

In order to support a voluntary deed against the settlor, the parties claiming under it must be able to show that he understood what he was doing. This is particularly the case if the settlor was young or otherwise inexperienced in business at the time when he made the settlement, or if the deed contains unusual provisions,(s) but the court does not consider the propriety or impropriety of the provisions except as bearing on the question whether the settlor knew what he was doing: *Dutton* v. *Thompson* (1883), 23 Ch. D. 278; 52 L. J. Ch. 661.

Where there is a fiduciary relationship between parties.

Where there is a fiduciary relation between the parties—*e.g.*, that of parent and child, guardian and ward, solicitor and client, trustee and beneficiary—a gift cannot be supported, unless it is clearly shown that it was not influenced thereby.(*t*) For this purpose the donor must have separate and independent advice, and the solicitor advising him must satisfy himself not only that the donor fully understands what he is doing, but also that the gift is a proper one for him to make under the circumstances; if he is not so satisfied, his duty is to advise his client not to go on with the transaction, and to refuse to act further for him if he persists. For instance, in a re-settlement the ultimate limitation must be in favour of the tenant in tail, not in favour of the tenant for life unless the latter has in fact purchased the ultimate interest. It is also necessary that the separate adviser should be aware of all the circumstances, and be in a position to give all the necessary information.(*u*) The rule does not necessarily apply as between husband and wife: *Howes* v. *Bishop* [1909], 2 K. B. 390.

(q) *Pulvertoft* v. *P.* (1811), 18 Ves. 84, 99, and *cf. Re Innes* [1910], 1 Ch. 188; 79 L. J. Ch. 174; but the court must be satisfied that a present irrevocable declaration of trust has been made and the absence of communication of such declaration raises a strong inference against an intention to make the declaration irrevocable: *Re Cozens* [1913], 2 Ch. 478; 82 L. J. Ch. 421.

(r) *Milroy* v. *Lord* (1862), 4 D. F. & J. 264; 31 L. J. Ch. 798; *Mallott* v. *Wilson* [1903], 2 Ch. 494, 500; 72 L. J. Ch. 664.

(s) *Cooke* v. *Lamotte* (1851), 15 Beav. 234; 21 L. J. Ch. 371; *Prideaux* v. *Lonsdale* (1863), 1 D. J. & S. 433; 32 L. J. Ch. 317, 321; *Phillips* v. *Mullings* (1871), L. R. 7 Ch. 244; 41 L. J. Ch. 211.

Limitation in favour of tenant in tail.

In the case of a gift by a client to his solicitor, the presumption of influence is not rebutted by the mere fact of the donor employing a separate solicitor to advise him in that particular matter, so long as the relation of solicitor and client subsists between donee and donor for other purposes outside the gift, or at all events unless it can be clearly inferred that the influence arising from the relation no longer exists: *Wright* v. *Carter* [1903], 1 Ch. 27; 72 L. J. Ch. 138.

Gifts from client to solicitor.

A purchaser for value, unless he has notice to the contrary, may assume that a solicitor who acts for the donor has done his duty.(*v*)

It has been sometimes supposed to be the duty of the solicitor who prepares a voluntary deed to advise the insertion of a power of revocation in all cases, and that the want of such a power, unless by the express direction of the settlor, invalidates the deed. But there is no such general rule.(*w*) It depends on the circumstances whether such a power should be recommended or not;

Whether a power of revocation should be inserted.

(*t*) *Hatch* v. *H.* (1804), 9 Ves. 292; *Huguenin* v. *Baseley* (1807), 14 Ves. 273; and *cf. Re Coomber* [1911], 1 Ch. 723; 80 L. J. Ch. 399; *London and Westminster, &c., Co.* v. *Bilton* (1911), 27 T. L. R. 184; *Lloyd* v. *Coote and Ball* [1915], 1 K. B. 242; 84 L. J. K. B. 567.

(*u*) *Powell* v. *P.* [1900], 1 Ch. 243; 69 L. J. Ch. 164; *Willis* v. *Barron* [1902], A. C. 271; 71 L. J. Ch. 609; and see *Howes* v. *Bishop* [1909], 2 K. B. 390; 78 L. J. K. B. 796; *Bank of Montreal* v. *Stuart* [1911], A. C. 120; 80 L. J. P. C. 75.

(*v*) *Bainbrigge* v. *Browne* (1881), 18 Ch. D. 188; 50 L. J. Ch. 522; and see *De Witte* v. *Addison* (1899), 80 L. T. 207.

(*w*) *Hall* v. *H.* (1873), L. R. 8 Ch. 430; 42 L. J. Ch. 444; *Henry* v. *Armstrong* (1881), 18 Ch. D. 668.

in many cases it would be proper, while in others it would defeat the very object for which the deed is executed. It is only necessary to satisfy the court that the settlement, whether it contains a power of revocation or not, is the free determined act of the party making it, and if a person of full age and sound mind executes a voluntary settlement, he cannot have the deed set aside without giving some substantial reason why the transaction should not stand.

Partial rectification giving a general power.

Where a young man made a voluntary settlement in favour of himself, his wife, and children, with an ultimate trust in default of issue for his next of kin, the court upheld the settlement on the whole, but directed that it should be rectified by giving to the settlor a general power of appointment in default of issue.(*x*)

Voluntary assignment to trustees for benefit of creditors revocable.

A voluntary assignment of property to trustees in trust for the benefit of creditors who do not execute and are not privy to the deed operates merely as a power or mandate to the trustees, which may be revoked by the debtor at any time.(*y*)

Secus when communicated to creditors.

But if the disposition is communicated to creditors, the trust becomes irrevocable as against them, while as against other creditors, to whom it has not been communicated, it remains revocable.(*z*)

Doctrine does not apply to provision for mortgagees coming into effect after settlor's death.

The doctrine does not apply to a provision for creditors which comes into operation after the settlor's death. Thus where, by a voluntary deed, lands are limited in strict settlement, including a limitation to trustees of a term to commence at the settlor's death, in trust to accumulate the rents in order to raise a fund for payment of mortgages charged on the estate, the mortgagees become beneficiaries unless the instrument otherwise provides; hence the trust cannot be put an end to by a person claiming under the settlor.(*a*)

Provisions of the Fin. (1909-10) Act, 1910, as to voluntary dispositions.

Under Fin. (1909-10) Act, 1910, s. 59 (as amended), if the settlor dies within three years after the execution of a voluntary settlement, death duties attach to the property. Under s. 74 a voluntary settlement must be stamped with *ad valorem*

(*x*) *James* v. *Couchman* (1885), 29 Ch. D. 212; 54 L. J. Ch. 838; and see *Rake* v. *Hooper* (1900), 83 L. T. 669.

(*y*) *Garrard* v. *Lauderdale* (1831), 2 R. & M. 451; *Acton* v. *Woodgate* (1833), 2 M. & K. 492; 3 L. J. Ch. 83.

(*z*) *Johns* v. *James* (1878), 8 Ch. D. 744; 47 L. J. Ch. 853.

(*a*) *Re Fitzgerald's Settlement* (1888), 37 Ch. D. 18; 57 L. J. Ch. 594; *Priestley* v. *Ellis* [1897], 1 Ch. 489; 66 L. J. Ch. 240. As to settlement estate duty (now repealed) see *A.-G.* v. *Milne* [1914], A. C. 765; 83 L. J. K. B. 1083.

conveyance duty. In the case of land the consideration is the value of the land, and may necessitate a valuation. Hence, the practice of executing voluntary settlements, at any rate of land (*e.g.*, resettlements by father and son otherwise than on a marriage), are not so general as was formerly the case.

Settlements, &c., to avoid death duties or income tax, &c.

Many settlements or dispositions have, in recent years, been made to avoid death duties, income tax or super tax. Indeed, limited companies are, in many cases, incorporated with a view to saving death duties and super tax. These are transactions of a special nature, depending so much on the circumstances of each case, that it does not appear to be expedient to furnish forms or precedents purporting to deal with such matters.

SECT. IX.—*Stamps on Settlements.*

The Fin. (1909-10) Act, 1910.

Section 74 (1) of the Fin. (1909-10) Act, 1910, provides as follows:—

Dispositions *inter vivos.*

> Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale.

No particular method of valuation is prescribed, but when the value of the land is ascertained *ad valorem* stamp duty at the rate of £1 per cent. is, with certain exceptions, chargeable.(*b*)

Settlements.

Sub-section 4 of the same section provides:—

> Where any instrument is chargeable with duty both as a conveyance or transfer under this section and as a settlement under the heading "Settlement" in the First Schedule to the principal Act (the Stamp Act, 1891) the instrument shall be charged with duty as a conveyance or transfer under this section, but not as a settlement under the principal Act.

Exceptions.

This duty is not payable on conveyances or transfers in the following cases:—

(i) Where the consideration is marriage.(*c*)

(ii) Where made in favour of any body which is precluded from dividing any profit among its members and the property conveyed is to be held as an open space, or for the purposes of its preservation for the benefit of the nation: *ib.*, sub-s. (1).

(iii) Where made for a nominal consideration for securing the repayment of a loan: *ib.*, sub-s. (6).

(iv) Where made on the appointment or discharge of trustees, whether the trust is express or implied: *ib.*, sub-s. (6).

(*b*) Fin. (1909-10) Act, 1910, s. 73. See *infra* for summary of stamp duties on voluntary settlements according to the nature of the property settled.

(*c*) Fin. (1909-10) Act, 1910, s. 74 (5); where a resettlement is made by father and son on the marriage of the latter, such marriage is the consideration within this section, for the asset settled is the estate of the son.

(v) Where no beneficial interest passes, *e.g.*, where an outstanding legal estate is conveyed by a trustee or a settlement is executed pursuant to directions in a Will: *ib.*, sub-s. (6).

(vi) Where a trustee conveys property to a beneficiary, *e.g.*, on the winding up of a trust: *ib.*, sub-s. (6).

(vii) Disentailing assurances which do not limit any new estate other than an estate in fee simple in the person who disentails, *e.g.*, where the tenant for life and tenant in tail disentail and limit the property upon such trusts as they jointly appoint, and subject thereto upon the existing trusts: *ib.*, sub-s. (6).

Mention of grounds of exemption in the instrument.

The exemptions numbered (iii)–(vii) are allowed whether the instrument states the grounds of exemption or not.

Where a disposition is made on marriage it should always be stated that the intended marriage is the consideration, so as to obtain the benefit of exemption (i). Also in cases coming within exemption (ii) it will be desirable to state the nature and the purposes of the grant.

" Settlements."

Where the disposition comes within the definition of " settlement " in the First Schedule to the Stamp Act, 1891, it is nevertheless to be stamped as a conveyance or transfer (sub-s. 4). Thus voluntary settlements of land are chargeable with *ad valorem* duty on the value of the property settled.

Inadequacy of consideration, effect on subsequent purchaser.

Under s. 74 (5) the Commissioners can raise the objection that a conveyance is made for an inadequate consideration and is stampable as a settlement, but once the conveyance is stamped the provisions of the sub-section are at an end so far as any subsequent purchaser is concerned: *Re Weir and Pitt* (1911), 55 Sol. J. 536.

Summary of stamps on voluntary conveyances and transfers.

The general effect of ss. 73 and 74 of the Fin. (1909-10) Act, 1910, with reference to the stamps on voluntary conveyances or transfers may, it is conceived, be shortly stated as follows :—

Land.

As regards land, the *ad valorem* stamp will be £1 per £100 on the value of the property conveyed. This may involve the cost of a valuation.

Rights of redemption.

As regards a right of redemption, the amount of the mortgage debt must be deducted from the value of the property conveyed.

Life policies.

As regards life policies, the value will be the surrender value at the time of the assignment; this will generally be small. The stamp will be £1 per £100 on the value plus the covenant stamp (2*s*. 6*d*. per £5) for an annuity equal to the yearly premiums payable on the policies if there is a covenant to keep them up. Thus, as a rule, it will be worth while to make a voluntary settlement of policies.

Covenant to pay premiums.

Reversionary interests. As regards reversionary interests, the value of the reversion at the date of the assignment will be taken. The stamp will be £1 per £100 on such value. Frequently the stamp will be less than the 5*s*. per £100 marriage settlement stamp based on the value which would be attributable to the reversion if it had fallen into possession. *Semble,* an appointment of a reversion to be held on trust operates as an assignment, hence comes within s. 74.

Bearer securities. As regards bearer securities *semble,* ss. 73 and 74 do not apply, for there is no transfer in regard to which the stamp duty can be paid. It follows that the stamp on a settlement thereof will be 5*s*. per £100 as in the case of a marriage settlement. Instruments have been adjudicated on this footing, but in some cases it is open for the Commissioners to claim that a declaration of trust amounts to an equitable conveyance.

Cases where there are no transfers. Again, the same principle would appear to apply where the investments already stand in the names of the trustees of the new settlement (*e.g.*, on a resettlement of capital money and investments where the trustees of the prior settlement continue to act). Here, unless the dealing amounts to an equitable conveyance, the stamp will be 5*s*. per £100, notwithstanding that the equitable interests are dealt with, for the case cannot be distinguished from that of bearer securities.

Stocks and marketable securities. As regards stocks and marketable securities as defined in the Stamp Act, 1891, s. 122,(*d*) the stamp was not doubled by s. 73, but it has now been doubled by the Fin. Act, 1920, s. 36.

These stamps will be carried on the transfers of the stock and not on the voluntary settlement.

Vesting deeds. Where a vesting deed is used, the *ad valorem* stamp is placed on the trust instrument, not on the vesting deed: S. L. Act, 1925, s. 4 (3) (e); a purchaser is not concerned with the stamp on the trust instrument: *ib.*, s. 110 (2).

Mortgage debts. The Act of 1910, though possibly wide enough in terms, does not appear to alter the law in regard to the stamps payable on the transfer (6*d*. per £100 on the amount transferred) or voluntary settlement (5*s*. per £100) of a mortgage debt; see *per contra,* Alpe, 17th ed., 196, 199; at any rate, so far as the transfer is concerned, 6*d*. per £100 of the debt transferred appears to be the proper stamp. Section 74 only imposes a stamp on the transfer of property, not on a settlement as such. Very explicit language would be required to impose a higher *ad valorem* stamp

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(*d*) See also *Speyer Bros.* v. *I. R. Commrs.* [1908], A. C. 92; 77 L. J. K. B. 302.

on a voluntary transfer than would have been payable had the consideration been the full value of the mortgage debt, seeing that *primâ facie* the stamp is based on the sum transferred, not on the consideration paid. It would be intolerable if a purchaser could not rely on the usual *ad valorem* stamp as being correct; it would mean that the stamp on nearly every transfer of mortgage would have to be adjudicated. The transfer would not show whether the case was within s. 74, or not.

What voluntary settlements still desirable.

It follows from the above that it may still be well worth while to make voluntary settlements of rights of redemption (where the mortgage debt does not leave a large margin), life policies, reversionary interests, bearer securities, cash, investments (where no transfer is required and the transaction does not amount to an equitable conveyance) and *semble* mortgage debts. By reason of the favourable position (except as regards the initial stamp) of bearer securities, the practice of authorising investment in them has become more common in Wills and settlements; this is recognised in T. Act, 1925, s. 7. Before making a voluntary settlement of investments it may sometimes be worth while to sell out and invest in bearer securities.

Why bearer securities are authorised.

Declarations for defining existing trusts.

Where money or bearer securities have been delivered to trustees on the faith of undertakings, previously given, that if this is done they will hold them on certain specified trusts, a deed of declaration of trust subsequently executed for furnishing evidence of the actual trusts on which the property is held, only attracts a 10*s*. stamp.

Voluntary settlements of land.

Voluntary settlements of land have become so expensive, having regard to the £1 *ad valorem* duty and the possible cost of valuation, that in the case of resettlements by a father and son, instead of barring the estate tail and resettling upon the son attaining full age, the practice is becoming general of postponing the resettlement until the son's marriage, or until it can be disposed of by Will, except as to such parts of the property to be settled as will not carry the £1 *ad valorem* stamp.

Adjudication.

Sub-section (2) of s. 74 provides for the adjudication of the stamp. The stamp should always be adjudicated.

Stamping after execution.

Sub-section (3) enables voluntary dispositions to be stamped after execution without penalty within the periods mentioned in the Stamp Act, 1891, s. 15 (2).

Stamps where the instrument is exempted from the new duty.

Where a settlement is exempt from the *ad valorem* conveyance duty, *e.g.*, a marriage settlement, the provisions of the Stamp Act, 1891, still apply.

Stamps on settlements.

By the Stamp Act, 1891, the following stamp duties are made payable under the head of "Settlement" in the schedule—

Any instrument [*whether voluntary, or*], upon any good or valuable consideration, other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled, or agreed to be settled in any manner whatsoever:

	£ s. d.
For every £100, and also for any fractional part of £100, of the amount or value of the property settled or agreed to be settled - - - - - - - - - -	0 5 0

Exemption.

Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment, where duty has been duly paid in respect of the same property upon the settlement creating the power or the grant of representation of any Will or testamentary instrument creating the power.(*e*)

Bond or covenant for annuity.

Settlements frequently contain covenants for payment of an annuity. Under the same Act a Bond, Covenant, or other Instrument (*f*) for payment of an annuity is charged as follows:—

(1) Being the only or principal or primary security (*g*) for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or of any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.

For a definite and certain period, so that the total amount to be ultimately payable can be ascertained	The same *ad valorem* duty as a bond or covenant for such total amount.
For the term of life or any other indefinite period.	£ s. d.
For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable - - -	0 2 6

(2) Being a collateral or auxiliary or additional or substituted security (*h*) for any of the above-mentioned purposes where the principal primary instrument is duly stamped.

Where the total amount to be ultimately payable can be ascertained - - - - - - -	The same *ad valorem* duty as a bond or covenant of the same kind for such total amount.
In any other case:	£ s. d.
For every £5, and also for any fractional part of £5, of the annuity or sum periodically payable - - - -	0 0 6

(*e*) See *Russell* v. *I. R. C.* [1902], 1 K. B. 142; 71 L. J. K. B. 201.

(*f*) "Instrument" includes an agreement not under seal: *Nat. Tel. Co.* v. *I. R. C.* [1900], A. C. 1; 69 L. J. Q. B. 43; *Durham Electrical, &c., Co.* v. *I. R. C.* [1909], 2 K. B. 604; 78 L. J. K. B. 1158; Highmore, 4th ed., 135.

"Instrument."

(*g*) See *Kennedy* v. *I. R. C.* (1900), 65 J. P. 9.

(*h*) See *I. R. C.* v. *Oliver* [1909], A. C. 427; 78 L. J. P. C. 146.

The Act also contains the following provisions relating to stamps on settlements :—

Settlement of policy or security.

Section 104.—(1) Where any money which may become due or payable upon any policy of life insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made, is to be charged with *ad valorem* duty in respect of that money.

(2) Provided as follows :—

Proviso as policies.

(a) Where, in the case of a policy, no provision is made for keeping up the policy, the *ad valorem* duty is to be charged only on the value of the policy at the date of the instrument.(*i*)

(b) If in any such case the instrument contains a statement of the said value, and is stamped in accordance with the statement, it is, so far as regards the policy, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

Settlements when not to be charged as securities.

Where reversionary interest settled, exemption as regards annual sum payable in meantime.

Section 105. An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security is not to be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock, or security, or by reason of containing, where the money, stock, or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment, by the person entitled in possession to the interest or dividends of the money, stock, or security, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of £4 per cent. per annum upon the amount or value of the money, stock, or security.

Where several instruments, one only to be charged with *ad valorem* duty.

Section 106.—(1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of the property exceeds ten shillings, one only of the instruments is to be charged with the *ad valorem* duty.

(2) Where a settlement is made in pursuance of a previous agreement upon which *ad valorem* settlement duty exceeding ten shillings has been paid in respect of any property, the settlement is not to be charged with *ad valorem* settlement duty in respect of the same property.

(3) In each of the aforesaid cases the instruments not chargeable with *ad valorem* duty are to be charged with the duty of ten shillings.

Penalty for not stamping a settlement within the prescribed period.

If a settlement is not stamped within thirty days after it is first executed, or if executed abroad, within thirty days after it is first received in the United Kingdom, the settlor (in the case of conveyances or transfers operating as voluntary dispositions, the grantor or transferor, see Fin. (1909-10) Act, 1910, s. 74 (3)) is liable to forfeit £10 : Act of 1891, s. 15 (2) (c).

" Definite and certain."

The expression " definite and certain " applies not to the interest of the settlor, but to the amount of the money, and the *ad valorem* settlement duty is payable though the settlor's interest is only contingent.(*j*)

(*i*) See *D. of Northumberland* v. *I. R. C.* [1911], 2 K. B. 1011 ; 81 L. J. K. B. 240.

(*j*) *Onslow* v. *I. R. C.* [1891], 1 Q. B. 239 ; 60 L. J. Q. B. 138 ; and see Highmore, 4th ed., 239.

SECT. X.—*Income Tax.*

The law relating to income tax is outside the scope of this work, and practitioners should consult one of the works solely relating to this subject, such as Konstam on Income Tax. But where a point on income tax arises, a foot-note has been made against the form or precedent.

Income tax law consolidated by the Income Tax Act, 1918.

The law relating to income tax has been consolidated by the Income Tax Act, 1918, as amended by the Finance Acts, 1919 to 1926.

Rules as to assessment of tax.

The rules as to assessment of property for the purposes of taxation are given in Schedules A to E, and are supplemented by general rules applicable to all schedules.

Tax charged on income at source.

In most cases income tax is charged at the source of income; thus, the tax on dividends is generally paid before the dividends, and the tax on income derived from land is first charged on the tenant whether or not he is the beneficial owner of the income.

Income derived from land assessed in Sch. A and B.

Income derived from the ownership of land is assessed for income tax under Sch. A; that derived from the occupation of land under Sch. B.

Where the owner and occupier are the same person both schedules apply.

Sch. A, landlords' property tax.

Income tax under Sch. A, commonly known as landlords' property tax, is first paid by the tenant or occupier: Sch. A, VII, r. 1, but an incoming tenant is only liable for so much of the tax as he can recover from his landlord, *i.e.*, in respect of that part of the year of assessment in which he occupied the premises, similarly an outgoing tenant is charged an apportioned share of the tax: *ib.*, VII, rr. 2, 3.

When landlord pays tax in first instance.

In the following cases the landlord pays the tax in the first instance—

(a) Where the annual value of the property is under ten pounds;

(b) Where a house is used by a number of independent tenants;

(c) Where a house is let for less than a year;

(d) Where a house is occupied by an accredited representative of a foreign state: Sch. A, VII, rr. 8, 10.

Deduction from rent in respect of landlords' property tax.

A tenant may deduct from his rent an amount equal to the amount he has paid in respect of landlords' property tax, but he cannot do this until he has actually paid the tax: Sch. A, VIII, r. 1: *Barnes* v. *Kyffin* (1916), W. N. 166; and Konstam, 3rd ed., 60.

It is immaterial whether the rent is payable to the landlord or to a mortgagee.

Where the rent exceeds the assessment for tax, the amount to be deducted will be calculated on the basis of the assessment and not on the rent.(*k*)

Deduction must be made from the first payment of rent after the tax has been paid : *Hill* v. *Kirshenstein* [1920], 3 K. B. 556 ; 89 L. J. K. B. 1128.

Deduction from annuities and mortgage interest in respect of income tax.

A similar rule as to deduction applies where the tax has been charged in respect of an annuity or interest upon a mortgage. In the case of an annuity, if the land upon which it is charged does not, in fact, produce any income, so that the payment is made from other sources, the tax deducted will be that paid on the source from which the annuity was paid and not that on the land charged : *L. C. C.* v. *A.-G.* [1901], A. C. 26 ; 70 L. J. K. B. 77.

Commissioners' receipt need not be shown.

Where an amount paid in income tax is deducted from rent or mortgage interest or an annuity, the income tax receipt need not be shown as proof that income tax has actually been paid.(*l*)

Agreements not to deduct tax are void.

Any agreement not to deduct tax is void (Gen. r. 23),(*m*) but this does not apply to an agreement to pay a fixed rate of interest after deduction of income tax : *Brooke* v. *Price* [1917], A. C. 115 ; 86 L. J. Ch. 329.

This rule does not affect Wills : Konstam, 3rd ed., 63.

Exemptions from liability for income tax.

Exemption from income tax is allowed in certain cases of which examples are given below.

General liability of corporations.

Limited companies and other corporations are liable to pay the tax at the full rate, whatever the amount of their income, and upon the whole of their income, subject to the following exceptions :—

Exemptions.

(a) Certain exemptions are allowed to charitable bodies (not including schools) and to trustees for charitable purposes ;(*n*)

(*k*) Konstam, 3rd ed., 60 ; *cf.* *Rossdale* v. *Fryer* [1922], 2 K. B. 303 ; 91 L. J. K. B. 620.

(*l*) *North London Property Co.* v. *Moy* [1918], 2 K. B. 439 ; 87 L. J. K. B. 986.

(*m*) *Floyer* v. *Banks* (1863), 32 L. J. Ch. 610 (Marriage Settlement) ; *Blount* v. *B.* [1916], 1 K. B. 230 ; 85 L. J. K. B. 230 (Alimony Agreement); and see Konstam, 3rd ed., 63.

(*n*) Konstam, 3rd ed., 285, *et seq.* ; Fin. Act, 1925, ss. 19 and 21.

(b) Certain exemption is given to the following special institutions :—

- (i) Churches and chapels ;
- (ii) The British Museum ;
- (iii) Registered and unregistered friendly societies ;
- (iv) Savings banks registered under the Savings Banks Act, 1863 ;
- (v) Trade unions ;
- (vi) Industrial and provident societies.

Relief to individuals from liability for income tax.

Individuals may obtain certain relief from taxation under the following enactments :—

The Income Tax Act, 1918—

Life insurance.

Under s. 32, as amended by the Fin. Act, 1920, ss. 26 and 32, in respect of premiums payable on life assurance policies.

Trade losses.

Under s. 34 in respect of losses in any trade, business, profession or vocation.

Interest on bank overdrafts and mortgage debts.

Under s. 36, in respect of interest payable on bank advances, and certain other advances.

Treasury exemptions.

Under s. 46, in respect of securities issued by the Treasury free of income tax.

Under s. 47, in respect of interest on War Savings Certificates.

Under ss. 48, 49, certain other War Loan securities and Post Office inscribed stock.

Relief under Sch. A. of Inc. Tax Act, 1918, for repairs.

Under Sch. A, V, deductions and allowances in respect of landlord's property tax are permitted. This includes an allowance for repairs, hence careful accounts of repairs should be kept.

This group of rules has been amended by the Fin. Acts, 1920, s. 32, and 3rd Sch. ; 1922, s. 25 ; 1923, ss. 28, 30 ; 1924, s. 25.

Schedule A, VI, gives the rules in respect of further allowances.

See also Sch. B, rr. 3, 6 ; Sch. C, r. 2 ; Sch. D, Cases I and II, rr. 3 and 6 (2) ; also Fin. Act, 1919, s. 18, and Fin. Act, 1924, s. 26 ; Sch. E, rr. 9, 10.

Ecclesiastical incomes.

In the general rules (applicable to all schedules) r. 2 relates to deductions authorised in respect of ecclesiastical incomes.

Fin. Act, 1919 ; Pensions.

The Fin. Act, 1919, allows exemptions—

Under s. 16, for wound and disability pensions; see also s. 25, and Fin. Act, 1920, s. 30.

Fin. Act, 1920; Earned income.

Under Fin. Act, 1920—

A 10 per cent. allowance in respect of earned income was authorised: s. 16; now increased to one-sixth: Fin. Act, 1925, s. 15 (maximum £250 per annum): *ib.*

Children, dependents, &c.

Relief in respect of children and dependents, and personal allowance is given by ss. 18 to 23. The Fin. Act, 1924, ss. 21, 22, 29, amend ss. 19 and 20 of the Act of 1920.

Dominion income tax.

Relief in respect of a previous payment of Dominion income tax is given by s. 27, and see Fin. Act, 1921, s. 28.

Scholarships.

Relief in respect of income arising from a scholarship, &c., is given by s. 28.

Fin. Act, 1921; Superannuation funds.

The Fin. Act, 1921, s. 32, gives relief in respect of income derived from investments and deposits of a superannuation fund.

Fin. Act, 1922; Management of mines.

Under Fin. Act, 1922—

Income tax paid on sums disbursed as expenses of management and supervision of mines is made repayable: s. 26.

Ministry of Pensions.

Allowances granted by the Ministry of Pensions to widows of members of Navy, Army, or Air Force in respect of their children are exempted: s. 27.

Contributory grants.

Contributory superannuation grants made pursuant to an Act of Parliament are exempted: s. 31.

Fin. Act, 1923; Colonial officers.

Under Fin. Act, 1923, s. 19, the emoluments of certain Dominion and Colonial officials are exempted.

Fin. Act, 1924; Agricultural societies.

Under Fin. Act, 1924, s. 23, certain profits of agricultural societies are exempted.

Fin. Act, 1925; Wear and tear.

Rules 6 and 7 of Cases I and II in Sch. D to the Fin. Act, 1918 (under which a deduction is authorised for the wear, tear and replacement of machinery and plant), are by the Fin. Act, 1925, s. 16, made applicable to any trade, profession or business and to profits from the occupation of land, including woodland.

Persons over 65.

Under Fin. Act, 1925, s. 15, an allowance from the total income of persons over sixty-five years of age is authorised.

When income tax is payable by settlor.

A person who makes any of the following dispositions is liable to pay income tax on the property disposed of:—

(1) Any disposition under which the settlor, without the consent of another person, may obtain the beneficial enjoyment of the property. For this purpose a husband and wife are one person: Fin. Act, 1922, s. 20.

(2) Any disposition under which property is so dealt with that its income is payable to any person for a period which cannot exceed six years: Fin. Act, 1922, s. 20.

(3) Where property is dealt with so that the income is payable to an infant or unmarried child of the settlor, unless the income is so payable for the whole life of the child: Fin. Act, 1922, s. 20.

Rate of income tax.

The rate at which income tax is charged varies annually and will be found in Pt. II of the current Fin. Act.

Super tax.

Super-tax is an additional income tax charged on incomes whose total from all sources exceeds a specified amount. As to this tax, see Konstam, 3rd ed., 305.

Inhabited house duty abolished.

Inhabited house duty was abolished by the Fin. Act, 1924, s. 20.

DIVISION I.

SETTLEMENTS (PERSONAL).

PART I.

LIST OF FORMS IN SETTLEMENTS (PERSONAL).(a)

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SECTION I.

PARTIES AND RECITALS.

No. 1.

Parties.

THIS SETTLEMENT is made the —— day of ——, BETWEEN —— (*intended Husband*), of, &c. (hereinafter called the Husband), of the 1st part, —— (*intended Wife*) (hereinafter called the Wife), [a daughter of ——, of, &c.] of the 2nd part, the said (*b*) —— (*intended Wife's father*) (hereinafter called the Father), of the 3rd part, and —— (*two to four Trustees and their addresses and descriptions*) (hereinafter called the Trustees),(*c*) of the 4th part: WHEREAS :—

No. 2.

Agreement for marriage.

A marriage has been agreed upon and is intended to be solemnised between the Husband and Wife.

(*b*) The husband's or wife's father will not be joined unless he is settling property or covenanting to pay an annual or principal sum.

Number of trustees.

(*c*) If any land is held on trust for sale by a deed of even date, or any land is authorised to be acquired, there must be at least two trustees unless a trust corporation is acting: L. P. Act, 1925, s. 27 (2); L. P. (Amend.) Act, 1926, Sched. There must not be more than four trustees: T. Act, 1925, s. 34; the same persons must act as trustees of any conveyance on trust for sale as are acting as trustees of the settlement declaring the trusts of the proceeds of sale: *ib.*, s. 35. For the meaning of "trust corporation": L. P. Act, 1925, s. 205 (1) (xxviii); L. P. (Amend.) Act, 1926, s. 3.

Trust corporation.

Definition of "the trustees."

The definition "the trustees" is now sufficient for all purposes: T. Act, 1925, ss. 18 (devolution of powers or trusts), 36 (7) (powers of new or additional trustees), 43 (the like when appointed by the court). It is no longer necessary or expedient to provide that the expression includes the survivors or survivor of them or the personal representatives of the survivor or other the trustees or trustee for the time of the instrument.

Construction of documents.

In all deeds and other instruments coming into operation after 1925, "month" means calendar month; "person" includes a corporation; the singular includes the plural and *vice versa*, and the masculine includes the

No. 3.

Transfer of investments.

WITH a view to the settlement intended to be hereby made, the Husband (*or other person*) has caused to be transferred into the joint names of the Trustees the investments mentioned in the [first] Schedule hereto, representing the sum of £—— sterling.(*d*)

No. 3A.

Title to policies.

THE Husband is entitled to the policy [policies] on his own life hereinafter mentioned and assigned.

No. 4.

Title of Wife to share under a settlement and appointment.

UNDER a Deed (hereinafter called the Settlement of 19—), dated the —— day of ——, and made between, &c. (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said —— and ——), and a Deed of Appointment bearing even date herewith, under the hands and seals of the said —— and —— (executed under a power contained in the Settlement of 19—), the Wife, as one of the —— children of the said —— and ——, is now entitled in reversion expectant on the death of the survivor of her father and mother, and in the meantime subject to their respective life interests under the Settlement of 19—, and provided the now intended marriage shall be solemnised within six months from the date of the said Appointment to (*e*) one- —— share of the investments mentioned in the —— Schedule hereto (being the investments now held on the trusts of the Settlement of 19—, and standing in the joint names of, &c., the present Trustees of that Settlement), or of the investments for the time being held on the trusts of that Settlement [and is also entitled (subject as aforesaid) to a like share in any other property which may become subject to the trusts of the Settlement of 19— by virtue

---

feminine and *vice versa*, unless the context otherwise requires: L. P. Act, 1925, s. 61.

Description of deeds.

Deeds will be described either as a deed simply or according to the nature of the transaction intended to be effected: *ib.*, s. 57.

Dates; figures in place of words.

In recitals of documents stating the date or referring to a year, figures, not words, should be employed. It is usual, though not essential, that words should be used when giving the date at the beginning of a deed or Will.

Notices of dealings with reversionary interests, &c.

It must be seen that notice in writing is given of all dealings with life, reversionary or other equitable interests in accordance with L. P. Act, 1925, s. 137; as to trust corporations acting as registrars of such notices: *ib.*, s. 138.

If marriage not solemnised.

(*d*) If the marriage is not solemnised or is annulled the investments will be ordered to be re-transferred: *Essery* v. *Cowlard* (1884), 26 Ch. D. 191; 53 L. J. Ch. 661; see also *Bond* v. *Walford* (1886), 32 Ch. D. 238; 55 L. J. Ch. 667; *Re Wombwell* [1922], 2 Ch. 298.

Stamps.

The value of the investments is mentioned for purposes of stamp duty. As to the duty on voluntary settlements, *see* Fin. (1909-10) Act, 1910, s. 74.

Title to an appointed sum.

(*e*) If a particular sum is appointed say:—

"To a [net] sum of £—— raisable out of the investments, &c."

of the covenant to settle after-acquired property therein contained or otherwise].(*f*)

No. 5

Title of Wife to share of residuary estate under a Will.

UNDER the Will dated, &c., and proved in the —— Probate Registry on, &c., of ——, who died on, &c., the Wife, as one of the —— children of the said ——, is entitled in reversion expectant on the death of her father [and mother], the said —— [and ——], and in the meantime subject to his [their respective] life interest[s], to one- —— share of the proceeds of the sale, and of the income until sale of the real estate and chattels real by the said Will devised on trust for sale and now remaining unsold, and of the investments representing the proceeds of sale of the other real estate and the residuary personal estate of the said testator now held on the trusts of the said Will, the particulars of which properties are mentioned in the —— Schedule hereto, and such properties are now vested in or standing in the joint names of ——, the present trustees of the said Will.

No. 6.

Title of Wife to a portion under a Will raisable under a term [and to a share in the testator's residuary estate].

UNDER the Will dated, &c., and proved in the —— Probate Registry on, &c., of ——, who died on, &c., and of which Will —— are now the sole surviving trustees and executors, the Wife as one of the two surviving children of the said testator (other than his —— son), is now [*or* will upon her marriage or upon her attaining the age of twenty-one years (which first happens) become] absolutely entitled to one moiety of a sum of £—— raisable [after the death of ——] with interest thereon at the rate of £— per cent. per annum under the trusts of a term of five hundred years in the said testator's freehold and leasehold estates situated at, &c., by his said Will limited to —— UPON TRUST for raising that sum for portions for the testator's children (other than a son [or daughter] entitled as tenant for life to the said estates): [And also to one moiety of the residue, after payment of debts, legacies and certain other charges (including the said sum of £——), of the net money to arise from the sale and conversion of the said testator's residuary real and personal estate, and which was by the said Will devised and bequeathed to —— UPON TRUST for sale and conversion].(*g*)

Title in default of appointment.

(*f*) The words in square brackets will be used where the appointment of even date extends to *any* property which may become subject to the trusts of the principal settlement. If the wife is also entitled in default of appointment to a further share and the appointed share only is intended to be settled, the fact may be mentioned in the recitals.

(*g*) If the portion is immediately raisable under the equitable term, but it is not intended to pay it off at once, the trustees should be authorised to allow it

No. 7.

Title of Husband to a portion under a realty settlement and appointment.

UNDER a Deed (hereinafter called the Settlement of 19—) dated the —— day of ——, and made between, &c. (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said —— and ——, whereof —— and —— are the present trustees), and a Deed of Appointment bearing even date herewith under the hand and seal of the said —— (executed under a power contained in the Settlement of 19—), the Husband, as one of the younger children of the said ——, is now entitled to the sum of £——, with interest thereon from the death of his father, the said ——, at the rate of £— per cent. per annum, raisable under the trusts of a term of —— years in the freehold and leasehold estates situated at, &c., and by the Settlement of 19— limited to the said —— UPON TRUST for raising the principal sum of £—— for portions for the younger children and issue of the said ——.

No. 8.

Conveyance of freeholds of even date on trust for sale.(h)

BY a Conveyance bearing even date with, but executed before this deed, and made between the same parties and in the same order as this deed, the (*Husband or other person*) conveyed the freehold properties therein mentioned situated in the county of ——, to the Trustees in fee simple UPON TRUST for (*the Husband or other grantor*) in fee simple until the solemnisation of the said intended marriage and after the solemnisation thereof UPON TRUST to sell the said properties and stand possessed of the net money to arise from any such sale after payment of costs, and also of the net rents and profits of the premises until sale, Upon the trusts declared concerning the same by a Settlement of even date therein referred to (meaning this deed).

No. 9.

Assignment of leaseholds of even date on trust for sale.

BY an Assignment bearing even date with, but executed before this deed, and made between the same parties and in the same order as this deed, certain leasehold properties situated at, &c., held under a Lease dated the ——, day of ——, were assigned unto the Trustees for the residue of the term granted by the said Lease at the rent and subject to the covenants by the

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to remain on the security of the term until requested in writing to call it in. A similar power should be given if the residuary estate cannot be immediately distributed. Trustees have power to accept property before the time at which it is made transferable or payable: T. Act, 1925, s. 15 (a).

(h) If the conveyance is made subject to a prior life interest this recital must be varied. If any of the land has been enfranchised by the L. P. Act, 1922, and the manorial incidents have not been extinguished, the conveyance must be produced to the steward for endorsement within six months: *ib.*, s. 129. The conveyance should be executed as an escrow till the marriage is solemnised.

Production to steward.

Escrow.

lessee and the conditions by and in the said Lease reserved and contained UPON TRUST (after the solemnisation of the said marriage) to sell the same properties and to stand possessed of the net money to arise from any such sale (after payment of costs); and also of the net rents and profits of the premises until sale (after payment of the rent reserved by and all outgoings payable under the said Lease), Upon the trusts declared concerning the same by a Settlement of even date therein referred to (meaning this deed).

No. 10.

Order under Infant Settlements Act.

BY an Order of the Chancery Division of the High Court of Justice made in Chambers,(*i*) on the —— day of ——, in the action —— v. ——, and in the matter of The Infant Settlements Act, 1855,(*j*) Upon the application of the Wife, by, &c., her next friend, and of the said —— (*the guardians*), the Judge being of opinion that [the proposed marriage of the said infant —— with the Husband was a fit and proper marriage for the said infant, and that] the Settlement proposed to be effected [by a Conveyance of even date herewith

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(*i*) See R. S. C., 1883, O. 55, r. 2 (10).

Infant Settlements Act, 1855.

(*j*) Under the Act, any appointment or disentailing assurance by an infant tenant in tail becomes void if he dies under age: s. 2; but an appointment by an infant, who is not a tenant in tail, remains effectual notwithstanding death: *Re Scott* [1891], 1 Ch. 298; 60 L. J. Ch. 461. The Act is expressly saved by the S. L. Act, 1925, s. 27 (3), provided that a legal estate in land is not vested in an infant.

Application of the Act to post-nuptial settlement.

The Act applies only to male infants who have attained twenty, and females who have attained seventeen: s. 4; but a binding settlement can be made after marriage: *Re Sampson and Wall* (1884), 25 Ch. D. 482; 53 L. J. Ch. 457; followed in *Re A. B.* (1914), W. N. 140; *Re Phillips* (1889), 34 Ch. D. 467; 56 L. J. Ch. 337; *Re Leigh* (1889), 40 Ch. D. 290; 58 L. J. Ch. 306 (in the last two cases the infant was under the specified age at the time of marriage); and though the point was left open in *Seaton* v. *S.* (1887), 13 A. C. 61; 57 L. J. Ch. 661, such settlements are still authorised by the court.

No jurisdiction to compel settlement.

The court has no jurisdiction to compel an infant to make a settlement, whether a ward of court (*Re Leigh, supra*), or not: *Re Potter* (1869), L. R. 7 Eq. 484.

Agreement to settle after-acquired property.

Property coming to the infant under the Will of a person who dies after the settlement is "in expectancy" within the meaning of the Act and bound by a covenant to settle after-acquired property: *Re Johnson* [1891], 3 Ch. 48; 60 L. J. Ch. 499; but *cf. Allcard* v. *Walker* [1896], 2 Ch. 369; 65 L. J. Ch. 660.

Provision for future marriage.

The settlement should provide for the children of a female ward by a future husband: *Rudge* v. *Winnall* (1848), 11 Beav. 98; 17 L. J. Ch. 215; *Re Hoare* (1862), 4 Giff. 254.

Husband will not be excluded from taking under wife's testamentary appointment.

The court has refused to authorise a provision prohibiting the wife from exercising a testamentary power vested in her, in default of issue of the marriage, in favour of her husband, though he married a ward in defiance of an order of the court: *Re Sampson and Wall* (1884), 25 Ch. D. 482; 53 L. J. Ch. 457.

Costs of settlement.

The costs of all parties of the settlement (including the husband) may be and] by this deed was a proper Settlement to be made in contemplation of [such] the intended marriage of the said infant with the Husband and that the Deed[s] therein referred to, being [the said Conveyance of even date herewith and] this Deed, was a [were] proper Deed[s] for giving effect to such Settlement, the said Judge did, pursuant to the aforesaid Act, authorise and approve of such Settlement, and did order that the said infant should be at liberty, in contemplation of her marriage with the Husband, to execute the said Deed[s] accordingly [and that upon the due execution of the said Conveyance of even date herewith, and of this Deed by the said —— and ——, they should be at liberty to intermarry].(*k*).

Settlement approved by the Judge.

THIS deed has been approved by the said Judge, as appears by the signature of the Master in the margin hereof:

No. 10A.

Order for the settlement of a lunatic's property.(*l*)

(1) By an Order dated the —— day of ——, and made under the Act 53 Vict., c. 5, and Amending Acts, In the Matter of the Settlor, the Receiver was appointed to exercise the powers of a committee of the estate of the Settlor:

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paid out of capital on the marriage of a female ward: *De Stacpoole* v. *De S.* (1889), 37 Ch. D. 139; 57 L. J. Ch. 463.

Settlements by infants apart from the Act.

Apart from the Act, an agreement by the husband, which before the M. W. P. Act, 1882, bound the property of his infant wife as affecting the marital right, continued to have that effect by virtue of s. 19 of the latter Act: *Stevens* v. *Trevor-Garrick* [1893], 2 Ch. 307; 62 L. J. Ch. 660; *Buckland* v. *B.* [1900], 2 Ch. 534; 69 L. J. Ch. 648; until the M. W. P. Act, 1907, s. 2, otherwise provided.

Infants' contracts.

An agreement for a settlement by an infant is voidable, not void: *Duncan* v. *Dixon* (1890), 44 Ch. D. 211; 59 L. J. Ch. 437; and, unless repudiated within a reasonable time after coming of age, becomes binding: *Burnaby* v. *Equitable, &c., Socy.* (1885), 28 Ch. D. 416; 54 L. J. Ch. 466; *Edwards* v. *Carter* [1893], A. C. 360; 63 L. J. Ch. 100; *Carnell* v. *Harrison* [1916], 1 Ch. 328; 85 L. J. Ch. 321; and may be effectually ratified while still under coverture: *Re Hodson* [1894], 2 Ch. 421; 63 L. J. Ch. 609. The infant may be put to election to confirm the settlement or take nothing under it unless she is restrained from anticipation: *Willoughby* v. *Middleton* (1862), 2 J. & H. 344; 31 L. J. Ch. 683; *Smith* v. *Lucas* (1881), 18 Ch. D. 531; *Re Vardon* (1886), 31 Ch. D. 275; 55 L. J. Ch. 259; *Hamilton* v. *H.* [1892], 1 Ch. 396; 51 L. J. Ch. 220; *Re Hargrove* [1915], 1 Ch. 398; 84 L. J. Ch. 484; *Bolster* v. *B.* [1916], 1 I. R. 57; *cf. Haynes* v. *Foster* [1901], 1 Ch. 361; 70 L. J. Ch. 302, which, however, was not followed in *Re Hargrove, supra*.

Election.

Liberty to marry necessary only in case of ward.

(*k*) The enquiry as to the fitness of the marriage and liberty to marry are only necessary where the infant is a ward of court: *Re Dalton* (1856), 6 D. M. and G. 201; 25 L. J. Ch. 751. Where the application is only under the Act for the purpose of making a settlement binding on the infant, the infant does not become a ward of court: Seton, 7th ed., 1006, Form No. 5; 1015; and the words "the proposed marriage of the said infant," &c., and "and that upon due execution," &c., should be omitted.

(*l*) The recitals must be made to accord with the orders or minutes of the proposed orders

(2) By another Order made by the Judge in the Matter aforesaid and in the Matter of the Law of Property Act, 1925, section one hundred and seventy-one, on the application of the Receiver [*or other person authorised under sub-s.* (4)] the Judge being of opinion that, having regard to [*set out the circumstances which render a settlement expedient, see sub-s.* (1)] the settlement proposed to be effected [by a Conveyance of even date herewith and] by this Deed was a proper settlement to be made of [part of] the Settlor's property, and that the Deed[s] therein referred to [or draft thereof] being [the said Conveyance of even date herewith and] this Deed [or a draft[s] thereof] was a [were] proper Deed[s] for giving effect to such settlement the Judge did, pursuant to the said section, direct that the said Settlement should be made and did order that the Receiver [*or any trustee in whom the property may be vested, see sub-s.* (2)] should, in the name and on behalf of the Settlor, execute the said Settlement [and all transfers requisite for vesting the property and investments mentioned in the Settlement in the trustees named therein]:

Approval by the Judge.

(3) This Deed has been approved by the Judge as appears by the seal of the Master in the margin hereof:

No. 11.

Agreement for settlement.

UPON the treaty for the said intended marriage it was agreed that such Settlement should be executed as is hereinafter contained.

SECTION II.

ASSIGNMENT OF PROPERTY AND DECLARATION OF TRUSTS UNTIL MARRIAGE.

No. 12.

Commencement of operative part.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH and it is hereby declared as follows:—

No. 13.

Declaration of trusts of investments until marriage for Husband.

THE Husband,(*m*) with the privity of the Wife, hereby directs, and the Trustees hereby agree with the other parties hereto, that the Trustees shall and will stand possessed of the investments mentioned in the —— Schedule hereto, and so transferred into their joint names as aforesaid UPON TRUST for the Husband (*m*) until the said intended marriage, and after the solemnisation

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(*m*) Or other the person who has transferred the investments.

thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same :

No. 14.

Assignment of personal property.

THE Wife,(*n*) As Settlor,(*o*) with the approbation of the Husband [*or* with the privity of the "Wife," *as the case may be*] hereby assigns unto the Trustees:

No. 15.

Description of reversionary share under recited settlement.

[FIRST,] ALL THAT the one-—— share to which the Wife (*p*) is now or will on the solemnisation of the said intended marriage become under the Settlement of 19— entitled in expectancy as aforesaid in the investments mentioned in the —— Schedule hereto or in other the investments for the time being held upon the trusts of that Settlement :

No. 16.

Description of reversionary share under recited Will.

[SECONDLY,] ALL THAT the one-—— share to which the Wife (*q*) is now under the recited Will of ——, deceased, entitled in expectancy as aforesaid in the proceeds of the sale of the real estate and chattels real, and in the investments respectively mentioned in the first and second parts of the —— Schedule hereto or other the property for the time being held upon the trusts of that Will:

No. 17.

Description where defeasible shares are to be included.

AND ALL OTHER (if any) the shares or interests to which the Wife (*or other person*) may be or become [whether under or in default of appointment] entitled in the investments or in the real estate and chattels real, or in the proceeds of the sale of the real estate or chattels real from time to time held on the trusts of the Settlement of 19— [*or* the recited Will] :(*r*)

(*n*) Or whoever is entitled to the interests settled.

Qualification of covenants implied by "As Settlor."

(*o*) In 2 K. & E., 9th ed., 521, 597, it was suggested that a proviso to the effect that the implied covenants by the settlor should not render him or any persons deriving title under him liable to discharge or get in any incumbrance or estate not created by him or them should be inserted to qualify the covenants implied by conveying or assigning "As Settlor."

This can seldom be required. In a marriage settlement where both the spouses bring in property it is hardly desirable. In a voluntary settlement it may sometimes be expedient to omit the words "As Settlor." In any case any known incumbrance or liability ought to be referred to in the habendum.

(*p*) Or other person entitled.

(*q*) Or other person entitled. It is assumed that the land (if any) is held on trust for sale. It was formerly desirable to authorise the trustees to accept a conveyance of land in satisfaction of a share in the proceeds, but the head trustees for sale have a power to partition the land when the original shares have become absolutely vested, notwithstanding that a share may be subject to a derivative trust for sale: L. P. Act, 1925, s. 28 (3); thus the derivative trustees, being bound by the partition, do not require any such power.

(*r*) This would include a share to which the settlor was entitled in default

No. 17A.

The like of accruing shares under a Will containing a trust for sale.

ALL THAT, &c. (*as in Form No.* 16).

AND ALL OTHER (if any) the share or shares, as well original as accruing or to accrue, in the said real estate, chattels real and investments or the proceeds of sale thereof, or any other real or personal estate for the time being subject to the trusts of the recited Will, or the proceeds of sale thereof to which the Wife (*or other person*) is now or may at any time hereafter by any means become entitled under the trusts or powers of the recited Will.

No. 18.

Assignment of a portion under a realty settlement.

THE Husband [Wife], As Settlor, with the privity of the Wife [with the approbation of the Husband], hereby assigns unto the Trustees:

ALL THAT the sum of £—— raisable on the death of the said —— under the trusts of the said term of —— years, and to which the Husband (*or other person*) is now indefeasibly entitled as aforesaid under the trusts of the Settlement of 19—, and the recited Deed of Appointment thereunder:

No. 19.

Habendum. Reversionary shares, portions, &c.(*s*)

TO HAVE AND RECEIVE the same unto the Trustees absolutely UPON TRUST for the —— (*Settlor*) until the said intended marriage, and after the solemnisation thereof Upon the trusts hereinafter declared concerning the same.

No. 20.

Operative part in Conveyance of even date where freeholds are conveyed upon trust for sale for the purposes of a marriage settlement.

(*After Form No.* 2, *p.* 113, *recite seisin or title to land, then use Forms Nos.* 11 *and* 12, *p.* 119, *and say* :—)

(1) THE Husband, As Settlor, with the privity of the Wife, hereby conveys unto the Trustees:

ALL THAT, &c.(*t*)

TO HOLD unto the Trustees in fee simple IN TRUST for the Husband (*or other Settlor*) in fee simple until the said intended marriage shall be solemnised, and after the solemnisation thereof Upon the trusts hereinafter declared concerning the same:

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of appointment, and a subsequently appointed share: *Sweetapple* v. *Horlock* (1879), 11 Ch. D. 745.

Where principal sum is appointed.

Any of the foregoing parcels can be adapted to the case where a principal sum is appointed in place of a share; compare Form No. 18, *infra*.

Power to accept specific property in place of share.

(*s*) Where reversionary shares are settled, sub-clause (4) of Form No. 23, p. 124, may be used to authorise the trustees to accept specific property in satisfaction of the shares assigned. The words "premises hereinbefore assigned" will be substituted for the words "foregoing covenant" in that Form. But under T. Act, 1925, s. 22 (1), trustees have power, when reversionary interests fall into possession or become payable, to agree the value thereof, to accept authorised investments in or towards satisfaction thereof and to allow deductions for duties and costs.

Registered land.

(*t*) Where the husband is registered as proprietor under the L. R. Act, 1925, say:—"of all which lands the said —— is registered as proprietor

(2) The Trustees shall sell (*u*) the premises, but so that during the joint lives of the Husband and Wife and the life of the survivor of them every sale be made only with their, his or her consent in writing:

(3) The Trustees shall stand possessed of the net money to arise from sales under the trust for sale aforesaid, after payment thereout of all costs incidental thereto, and all other capital arising under the statutory powers, and also of the rents and profits of the premises until sale Upon the trusts declared concerning the same by a Settlement already prepared and intended to bear even date herewith, and to be made between the some persons as are parties hereto, and in the same order and to be executed immediately after this Conveyance:

(4) The premises or any part thereof may be retained unsold so long as the Trustees at their discretion, without being liable to account for the exercise of such discretion, think proper, but shall be deemed personal estate and devolve as such.

(5) and (6) (*Add, if desired, provision extending the powers conferred by L. P. Act*, 1925, *s.* 28, *see Form No.* 56, *p.* 159, *also power to appoint new Trustees, Form No.* 68, *p.* 166.(*v*)

No. 21.

Operative part in deed of even date where enfranchised lands affected by manorial incidents are conveyed on trust for sale.(*w*)

(1) The Husband (*or other Settlor*), As Settlor, with the privity of the Wife, hereby conveys unto the Trustees:

All that, &c., which properties were formerly copyhold of the Manor of ——, the Husband (*or other Settlor*) having been admitted tenant thereto on the, &c. (*date*):

To hold unto the Trustees in fee simple, subject to the manorial incidents and the rights of the lord of the said manor affecting the same, and so subject In trust for the Husband (*or other Settlor*) in fee simple until the said intended marriage shall be solemnised and thereafter Upon the trusts hereinafter declared concerning the same:

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with —— title under the Land Registration Act, 1925, under the heading District ——, Title No. —, Property ——."

In this case the settlor should execute a transfer to the Trustees at the same time as the conveyance, and apply for a proper restriction; the conveyance of the registered land, if there is no other land, may be placed in the personalty settlement, for the register severs the legal from the equitable title. It should be executed as an escrow to be delivered on the solemnisation of the marriage.

(*u*) This Form must be varied if the freeholds are not held in possession. For the implied power to postpone sale: L. P. Act, 1925, s. 25.

(*v*) *Re Johnson* [1915], 1 Ch. 435; 84 L. J. Ch. 393.

(*w*) The conveyance must be produced to the steward for endorsement within six months: L. P. Act, 1922, s. 129.

(2) to (6) (*As in last form*)

No. 22.

Operative part in deed of even date where leaseholds are assigned upon trust for sale for the purposes of a marriage settlement.(*x*)

(1) THE Husband (*or other Settlor*), As Settlor, with the privity of the Wife, hereby assigns unto the Trustees:

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Trustees for the residue of the term granted by the recited Lease at the rent and subject to the covenants by the Lessee and the conditions therein contained IN TRUST for the Husband (*or other Settlor*), until the solemnisation of the said intended marriage, And after the solemnisation thereof, Upon the trusts hereinafter declared concerning the same.

(2) (*As in clause* 2 *of Form No.* 20).

(3) (*As in clause* 3 *of Form No.* 20, *but saying after the words* "until sale" "after payment of the rent reserved by and all outgoings payable under the recited Lease, or otherwise in respect of the premises.")

(4) THE premises or any part thereof may be retained unsold so long as the Trustees think proper.

(5) and (6) (*As in Form No.* 20).

No. 23.

Covenant by parent to pay a principal sum.

(1) THE Father (*father of Wife*) hereby covenants with the Trustees (*y*) and also separately with the Husband and with the Wife, that if the said intended marriage shall be solemnised within six months from the date hereof the Father will, during his life, or his personal representatives will, within six months after his death, pay to the Trustees the sum of £——:(*z*) And also so long as that sum or any part thereof remains unpaid [after his death] will pay to the Trustees interest on the said sum or on so much thereof as for the time being remains due at the rate of £5 per cent. per annum, by equal half-yearly payments, the first half-yearly payment to be made at the end of six months from the day of the solemnisation of the said marriage [*or* of

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(*x*) See that any requisite licence to assign is obtained.

(*y*) According to an Irish case, *Kelly* v. *Larkin* [1910], 2 Ir. R. 550, a beneficiary can sue on a covenant under which he takes a benefit made with his trustee without showing that the trustee refuses to sue. This also operates as a covenant with each of the trustees: L. P. Act, 1925, s. 81.

Several covenant.

(*z*) Estate duty is payable out of the residuary estate. It is not correct to covenant to pay a future principal sum and an annuity till paid. The same result can be better obtained by a covenant to pay interest at a rate which would produce the required annuity; and see clause (2) of this Form. The parent should be given the right to pay the principal sum in his lifetime, for this may reduce the duties payable on his estate at his death.

Estate duty.

When interest and not an annuity should be paid.

the death of the Father], the said sum and the interest thereon to be held Upon the trusts hereinafter declared concerning the same.

Proviso as to payment of interest.

(2) PROVIDED that after the death of the Wife and of the survivor of any issue of the Wife by the now intended [or any subsequent] marriage (which last happens), the foregoing covenant by the Father to pay interest on so much of the said principal sum as may then remain unpaid, shall cease to be enforceable, but without prejudice to the right to enforce payment of any interest which may have previously accrued.

Trustees not to be bound to take proceedings.

(3) PROVIDED ALSO, that it shall not be obligatory on the Trustees to enforce the foregoing covenant for the payment of the said sum and interest or any part thereof respectively unless when required so to do in any specific case by writing signed by some person, or the guardian of some person beneficially interested, and unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken, and any omission or neglect by the Trustees in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust.

Power for Trustees to accept specific property in satisfaction of covenant (*or* reversionary interest).

(4) PROVIDED FURTHER that the Trustees may accept a transfer or conveyance of any investments or property at the mesne market price of the day, or at a valuation in or towards satisfaction of the (*a*) foregoing covenant, and so that any real estate or chattels real so accepted shall be conveyed on trust for sale and be subject to the same powers and provisions as if the same had been acquired under the power to purchase land hereinafter contained.

No. 24.

Assignment of policy on Husband's

THE Husband, As Settlor, with the privity of the Wife hereby assigns unto the Trustees:

ALL THAT policy of assurance (*b*) effected in his own name and

Power to accept property.

(*a*) When this Form is used in connexion with an assignment of a reversionary interest substitute "the share and premises hereinbefore assigned" for "the foregoing covenant." Sub-clause (4) no longer appears to be strictly necessary: T. Act, 1925, s. 22 (1). Independently of this direction, *semble*, land acquired would be subjected to a trust for sale: L. P. Act, 1925, s. 32, though that section only speaks of land purchased under a power; in any case, a trust to retain or sell created after 1925 is construed as a trust for sale: *ib.*, s. 25 (4).

(*b*) Notice in writing in duplicate of the assignment must be given to the insurance company: Policies of Assurance Act, 1867, Form No. 49, p. 148, should be used in connexion with this Form.

on his own life for the sum of £——, with the —— Insurance Company, dated the —— day of ——, numbered —, and at the annual premium of £——, and the said sum of £——, and all other money to become payable thereunder.

[*or* ALL THOSE policies of assurance effected in his own name and on his own life described in the —— Schedule hereto, with the principal sums thereby assured, and all bonuses and other money to become payable thereunder.]

life where the policy alone is settled *or* where it is settled by reference to trusts declared concerning other settled property.

TO HOLD unto the Trustees UPON TRUST for the Husband until the said intended marriage and after the solemnisation thereof UPON TRUST that the Trustees shall as soon as may be after the death of the Husband get in and receive the money to become payable under the said policy [policies] and stand possessed of the net residue thereof, after discharging all costs and expenses of recovering and receiving the same [Upon the Trusts and subject to the powers and provisions hereinafter declared concerning the same.] (*If the policy is settled by reference to the trusts declared concerning other property of the Husband or by reference to the trusts of the Wife's Fund with variations, say* :—)

Trusts where a Settlement contains a policy only.

Variation where a settlement contains other property and the policy is settled by reference to trusts previously declared.

UPON the Trusts and subject to the powers (including the statutory power of advancement) and provisions [other than the powers of revocation and new appointment in contemplation of or after a subsequent marriage (*c*)] hereinbefore declared concerning money forming part of the [Husband's *or* Wife's] Trust Fund, or such of the same as are subsisting and capable of taking effect and so as to form one fund (*d*) with the [Husband's *or* Wife's] Trust Fund [(*e*) but with this variation (namely), that if there shall not be any child of the said intended marriage who attains a vested interest under the trusts hereinbefore declared, in default of appointment, then subject to the trusts and powers hereinbefore contained, the said policy [policies] and all money received thereunder and the investments for the time being representing such money and the income and statutory accumulations (if any) of the income thereof or so

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(*c*) Those words are only required if the policy is settled by reference to a trust fund settled by the wife where she has power to re-settle it on a future marriage.

(*d*) See *Re Marquis of Bristol* [1897], 1 Ch. 946; 66 L. J. Ch. 446; *Re Cavendish* [1912], 1 Ch. 794; 81 L. J. Ch. 400; *Re Wood* [1913], 2 Ch. 574; 83 L. J. Ch. 59; *Re Fraser* [1913], 2 Ch. 224; 82 L. J. Ch. 406; *Re Campbell* [1922], 1 Ch. 551; 91 L. J. Ch. 433.

(*e*) This variation is only required if the policy is settled by reference to a trust fund settled by the wife.

much thereof as shall not have become vested or been applied under any of the trusts and powers affecting the same shall, after the death of the Wife and such failure of children as aforesaid, be held IN TRUST for the Husband absolutely].

SECTION III.

TRUSTS AFTER MARRIAGE AND POWERS OF HUSBAND AND WIFE.

No. 25.

Trusts after marriage of investments only; to invest and vary.

THE Trustees shall, after the solemnisation of the said intended marriage, stand possessed of the investments mentioned in the —— Schedule hereto UPON TRUST that the Trustees shall either permit the same to remain as invested (*f*) or shall, with the consent (*g*) of the Husband and Wife during their joint lives or of the survivor of them during his or her life, and after the death of both at the discretion of the Trustees, sell, call in or convert into money all or any of the investments, and shall with the like consent or at the like discretion invest the money arising thereby in the names (*h*) or under the control of the Trustees in any of the investments hereinafter authorised, with power from time to time with the like consent or at the like discretion (*i*) to change such investments for others of a like nature.

No. 26.

The like of proceeds of sale of real estate only.

THE Trustees shall, with the consent of the Husband and Wife during their joint lives, or of the survivor of them during his or her life, and after the death of both at the discretion of the Trustees, invest the net money to arise from any sale made under the trust for sale contained in the recited Conveyance of even date herewith, or any other capital money arising under that conveyance, in the names or under the control of the Trustees (*continue as in last Form*).

Trust to retain or sell.

(*f*) *Re Anson* [1907], 2 Ch. 424; 76 L. J. Ch. 641; also T. Act, 1925, s. 10 (3), (4); a trust to retain or sell is, when created after 1925, construed as a trust for sale: L. P. Act, 1925, s. 25 (4).

Consent not to be in writing.

(*g*) Consent should not be required to be in writing. Investments are often made on letters of request to bankers, the letter may not be preserved, and sometimes is signed only by the husband. In cases where the parties are going to reside abroad a provision can be inserted authorising the trustees to act on telegraphic directions.

(*h*) A trust to retain or invest "in the name" of a trustee does not rule out bearer securities: T. Act, 1925, s. 7.

(*i*) A power to invest "as the trustees think fit" means "as they honestly think fit": *Re Smith* [1896], 1 Ch. 71; 65 L. J. Ch. 159; *Re Hazeldine* [1918], 1 Ch. 433; 87 L. J. Ch. 303; *Re Wragg* [1919], 2 Ch. 58; 88 L. J. Ch. 269; and see article in (1917), 61 Sol. J. 520.

No. 27.

The like of reversionary share only.

THE Trustees shall, after the solemnisation of the said intended marriage, stand possessed of the shares and premises hereinbefore assigned UPON TRUST that the Trustees shall get in and receive or obtain transfer thereof, or the investments or other property representing the same, and shall either permit so much thereof as shall not be received in money to remain as invested, or shall, with the consent of the Husband and Wife, during their joint lives or of the survivor of them during his or her life, and after the death of both at the discretion of the Trustees, sell, call in or convert into money all or any of the investments or other property so received, and shall with the like consent or at the like discretion invest the money arising thereby, and also any money received in respect of the said shares and premises in the names or under the control of the Trustees (*continue as in Form No.* 25, *p.* 126).

No. 28.

Trusts after marriage as to various kinds of property to invest and vary.

Investments.

Proceeds of sale of real estate.

Reversionary shares.

Principal sum covenanted to be paid or portion assigned.

THE Trustees shall, after the solemnisation of the said intended marriage, stand possessed of the investments mentioned in the —— Schedule hereto and also of the net money to arise from any sale made under the trust for sale contained in the recited Conveyance of even date herewith, or any other capital money arising under that Conveyance, and also of the shares and premises hereinbefore assigned, as and when the same fall into possession, and also of the said principal sum of £—— hereinbefore covenanted to be paid [*if a portion, say* "the sum of £—— hereinbefore assigned"] as and when received UPON TRUST that the Trustees shall get in and receive or obtain transfer of the shares and premises hereinbefore assigned, or the investments representing the same, and shall either permit the investments mentioned in the —— Schedule hereto, and also so much of the shares and premises [*or* sum] hereby assigned and of the principal sum hereinbefore covenanted to be paid as shall not be received in money to remain as invested, or shall, with the consent of the Husband and Wife during their joint lives or of the survivor of them during his or her life, and after the death of both at the discretion (*j*) of the Trustees, sell, call in or convert into money all or any of the investments, and shall with the like consent or at the like discretion invest the money arising thereby, and also any money received in respect of the shares and premises hereby

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(*j*) Trustees need not preserve evidence that they have exercised such discretion: *Re Oddy* (1910), 104 L. T. 128. The expression "any other capital money arising under that conveyance" refers to L. P. Act, 1925, s. 28.

assigned, and also the net money to arise from any sale made under the trust for sale contained in the recited Conveyance of even date herewith, or any other capital money arising under that Conveyance, and also any principal money received under the covenant by —— hereinbefore contained [and also any money received in respect of the sum of £—— hereinbefore assigned], in the names or under the control of the Trustees, in any of the investments hereinafter authorised, with power from time to time with the like consent or at the like discretion to change such investments for others of a like nature.

No. 29.

Definition of "the Trust Fund" and trusts thereof.

The Trustees shall stand possessed of the investments mentioned in the —— Schedule hereto [the net money to arise from any sale made under the trust for sale contained in the recited Conveyance of even date herewith and any other capital money arising under that Conveyance] [the shares and premises hereinbefore assigned] [the said principal sum of £—— hereinbefore covenanted to be paid] [the sum of £—— hereinbefore assigned], and the investments for the time being representing the same (hereinafter called the Trust Fund), and of the annual income thereof [including therein any interest payable [in respect of the sum of £—— hereinbefore assigned *or*] under the foregoing covenant (*k*)] Upon the trusts and subject to the powers and provisions following (that is to say):—

No. 30.

Trusts for Husband for life, then for Wife for life, one fund.

(1) Upon trust to pay the annual income of the Trust Fund to the Husband during his life, And after his death to pay the said income to the Wife if she survives him during the residue of her life,(*l*) without power of anticipation during any coverture.

(2) After the death of both the capital and income of the Trust Fund shall be held (*Form No.* 37, *p.* 134).

No. 31.

Definitions of the Husband's

The Trustees shall stand possessed of the investments mentioned in the —— Schedule hereto [the net money to arise from any sale under the trust for sale contained in the said Conveyance

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(*k*) These words will be used where a portion or a principal sum agreed to be paid carries interest. Where two funds are settled, see Form No. 31.

"Separate use," express trust for, unnecessary.

(*l*) Section 2 of the M. W. P. Act, 1907, renders unnecessary the use of the words, "separate use" where a life estate in land is limited to a woman, but the words may still be desirable where the husband is a foreigner.

As regards personal estate the words have not been necessary since 1883: *Re Lumley* [1896], 2 Ch. 690; 65 L. J. Ch. 837; though possibly on the ground that the M. W. P. Act, 1882, s. 19, to some extent took a settlement out of the operation of the Act, the words were sometimes used, there can no longer be any excuse for this: M. W. P. Act, 1907, s. 2, save that where the husband is a foreigner the words may be useful.

and Wife's Trust Funds and trusts thereof.

of even date herewith, and any other capital money arising under that Conveyance] [the shares and premises hereinbefore assigned by ——] [the said principal sum of £—— hereinbefore covenanted to be paid] [the sum of £—— hereinbefore assigned by ——], and of the [varied] investments for the time being representing the same (all of which are hereinafter referred to as the Husband's Trust Fund), And shall also stand possessed of the investments mentioned in the —— Schedule hereto [the shares and premises hereinbefore assigned] (*&c., as in the description of the Husband's Trust Fund; if required, distinguishing between the property respectively brought in on behalf of the husband and wife*), and of the [varied] investments for the time being representing the same (all of which are hereinafter referred to as the Wife's Trust Fund), And also of the annual income of the Husband's Trust Fund and the Wife's Trust Fund respectively [including as part of the income of the —— Fund any interest payable [in respect of the sum of £—— hereinbefore assigned *or*] under the foregoing covenant(*m*)] Upon the trusts and subject to the powers and provisions following (that is to say):—

No. 32.

Usual trusts giving successive life interests in Husband's and Wife's Funds.(*n*)

(1) As to the Husband's Trust Fund UPON TRUST to pay the annual income thereof to the Husband during his life, and after his death to pay the said annual income to the Wife during the residue of her life, without power of anticipation during any coverture:

(2) As to the Wife's Trust Fund UPON TRUST to pay the annual income thereof to the Wife during her life, without power of anticipation during any coverture, and after her death to pay the said annual income to the Husband during the residue of his life:

(3) AND after the death of the survivor of the Husband and Wife the capital and income of the Husband's Trust Fund and of the Wife's Trust Fund shall be held (*Form No.* 37, *p.* 134).

No. 33.

Trusts for Wife for life and after her death to Husband for a protected life interest (express trust).

(1) [As to the Wife's Trust Fund] UPON TRUST to pay the annual income [thereof] of the Trust Fund to the Wife during her life, without power of anticipation during any coverture:

(*m*) These words will be used where a principal sum assigned or agreed to be paid carries interest. If reversionary interests are assigned by both the husband and wife they should in this form be referred to as "the shares and premises hereinbefore assigned by the husband" and "the shares, &c., by the wife."

(*n*) As to estate duty where two funds are settled, see *A.-G.* v. *Glossop* [1907], 1 K. B. 163; 76 L. J. K. B. 199; *per contra A.-G.* v. *Earl of Sandwich* [1922], 2 K. B. 500; 91 L. J. K. B. 757.

(2) AFTER the death of the Wife, if the Husband shall then be living and if (*o*) no act or thing shall have been done or suffered, and if no event shall have happened whereby the trust next hereinafter declared if subsisting would be determined, then to pay the annual income of the [Wife's] Trust Fund to the Husband during the residue of his life or until he does or attempts to do or suffers any act or thing, or until any event happens (other than an advance under the statutory power of advancement),(*p*) whereby if the same income were payable to him absolutely for his life he would be deprived of the right to receive the same or any part thereof,(*q*) in any of which cases, as well as on the death of the Husband, which first happens, the trust hereinbefore declared for payment to him of the said income shall determine: (*r*)

Husband until alienation.

(3) IF the trust aforesaid shall fail or determine in the lifetime of the Husband, then (*s*) UPON TRUST during the residue of his life to apply the annual income of the [Wife's] Trust Fund for the maintenance and support or otherwise for the benefit of all or any one or more exclusively of the other or others of him (*t*)

Then for him or issue of marriage, &c.

(*o*) See *Metcalfe* v. *M.* [1891], 3 Ch. 1; 60 L. J. Ch. 647; *West* v. *Williams*, [1899], 1 Ch. 132; 68 L. J. Ch. 127. This form (No. 33) should only be used where the property is settled by or on behalf of the wife.

(*p*) *Cf. Re Hodgson* [1913], 1 Ch. 34; 82 L. J. Ch. 31.

Garnishee order.

(*q*) A garnishee order does not so deprive him: *Re Greenwood* [1901], 1 Ch. 887; 70 L. J. Ch. 326; see also *Re Mair* [1909], 2 Ch. 280; 78 L. J. Ch. 711; Nor does the appointment of a receiver in lunacy: *Re Marshall* [1920], 1 Ch. 284; 89 L. J. Ch. 204. The release of a life interest in a sum advanced under a power of advancement does not forfeit a protected life interest: *Re Hodgson, supra.*

Order extinguishing life interest.

An order made in divorce proceedings temporarily extinguishing the life interest operates as a forfeiture: *Re Carew* (1910), 103 L. T. 658, but cf. *Loraine* v. *L.* [1912], P. 222; 82 L. J. P. 29; and so does a receiving order whether or not adjudication follows: *Re Laye* [1913], 1 Ch. 298; 82 L. J. Ch. 218.

As to the effect of an attempt to charge: *Re Porter* [1892], 3 Ch. 481; 61 L. J. Ch. 688; *Re Adamson* (1913), 57 S. J. 610; *Re Evans* [1920], 2 Ch. 304; 89 L. J. Ch. 525.

The destination of the income is not finally determined till it has actually accrued: *Re Jenkins* [1915], 1 Ch. 46; 84 L. J. Ch. 349.

(*r*) See another form, *Re Sampson* [1896], 1 Ch. 630; 65 L. J. Ch. 406.

(*s*) *I.e.*, in the case of bankruptcy, from the date of the act of bankruptcy: *Montefiore* v. *Guedalla* [1901], 1 Ch. 435; 70 L. J. Ch. 180.

Children's rights on forfeiture.

Where the trusts are for the husband for life or until bankruptcy and subject thereto to his children as he appoints, and in default of appointment to the children equally, then on the husband's bankruptcy the children are entitled to the income equally pending the exercise of the power of appointment: *Re Master* [1911], 1 Ch. 321; 80 L. J. Ch. 190.

Exercise of discretionary trust.

(*t*) As to how far this discretionary trust can safely be exercised in favour of the husband after assignment or bankruptcy, see *Re Coleman* (1888), 39 and the issue of the said intended marriage as the Trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit, or if there shall be no issue in existence of the said intended marriage, Then for the maintenance, support, or otherwise for the benefit of all or any one or more exclusively of the other or others of him, and the persons who would, if he were actually dead, be entitled to the [Wife's] Trust Fund or the income thereof, as the Trustees in their absolute discretion, without being liable to account as aforesaid, think fit:

(4) After the death of the survivor of the Wife and Husband the capital and income of the [Husband's and of the] [Wife's] Trust Fund shall be held (*Form No.* 37, *p.* 134).

No. 33A.

Trust for Wife and after her death on "protective trusts" under T. Act, 1925, s. 33, for the Husband.

(1) As to the Wife's Trust Fund Upon trust to pay the annual income thereof to the Wife during her life without power of anticipation during any coverture:

(2) And after her death if the Husband survives her then during the residue of his life the said income shall be held on protective trusts for the benefit of the Husband:

(3) After the death of the survivor of the Husband and Wife the capital and income of the [Husband's and of the] [Wife's] Trust Fund shall be held (*Form No.* 37, *p.* 134).

No. 34.

Husband's fund; discretionary trust of income (express trust).(u)

(1) As to the Husband's Trust Fund, Upon trust during so much of the lifetime of the Husband as the Wife or any issue of the now intended marriage shall be living to apply the annual income thereof for the maintenance and support or otherwise for the benefit of all or any one or more exclusively of the other or others of the Husband and Wife and the issue of the said intended marriage as the Trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit:

After death of Wife and failure of issue to Husband for life.

(2) After the death of the Wife and the failure of the issue of the said intended marriage (which last happens), if the Husband shall be then living Upon trust to pay the annual income of the Husband's Trust Fund to the Husband during the residue of his life:

Ch. D. 443; 58 L. J. Ch. 226; *Re Ashby* [1892], 1 Q. B. 872; see also *Re Bullock* (1891), 60 L. J. Ch. 341; *Re Perkins* (1912), 56 Sol. J. 412; *Re Burroughs Fowler* [1916], 2 Ch. 251; 85 L. J. Ch. 550.

Object of immediate discretionary trust.

(u) This Form will be used where a discretionary trust is to be imposed at once so as to be good against the trustee in bankruptcy notwithstanding that the property is settled by the husband; compare the Form No. 34B, where the husband is given a life interest until alienation.

After death of Husband to Wife for life.

(3) AFTER the death of the Husband in the lifetime of the Wife, then UPON TRUST to pay the annual income of the Husband's Trust Fund to the Wife during the residue of her life without power of anticipation during any coverture (*insert here trusts of income of Wife's Fund, Form No.* 30 (1), *p.* 128, *and continue*):

(4) AFTER the death of the survivor of the Husband and Wife the capital and income of the Husband's Trust Fund and of the Wife's Trust Fund shall be held (*Form No.* 37, *p.* 134).

No. 34A.

Husband's fund; discretionary trust as in last form, by reference to T. Act, 1925, s. 33.

(1) As to the Husband's Trust Fund UPON TRUST during so much of the lifetime of the Husband as the Wife or any issue of the now intended marriage shall be living to hold the annual income thereof on the protective trusts for the benefit of the Husband and otherwise mentioned in paragraph (ii) of subsection (1) of section thirty-three of the Trustee Act, 1925:

(2), (3) and (4) (*As in last Form*).

No. 34B.

Trusts giving life interest to Husband in his own fund till alienation (express trust).(*v*)

(1) [As to the Husband's Trust Fund] UPON TRUST to pay the annual income [thereof] of the Trust Fund to the Husband during his life, or until he does or attempts to do or suffers any act or thing, or until any event happens (other than an advance under the statutory power of advancement),(*w*) whereby if the

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How far the gift over is valid in regard to property settled by the husband.

(*v*) This Form (No. 34B) assumes that the husband's fund is mainly settled by someone on behalf of the husband, and not by him personally. A trust determinable on *bankruptcy*, when declared as to property settled by the husband, is void as against his trustee in bankruptcy (see note to *Wilson* v. *Greenwood* (1818), 1 Swanst. 481; *Mackintosh* v. *Pogose* [1895], 1 Ch. 505; 64 L. J. Ch. 274; *Merry* v. *Pownall* [1898], 1 Ch. 306; 67 L. J. Ch. 162: *Re Burroughs Fowler* [1916], 2 Ch. 251; 85 L. J. Ch. 550), except to the extent of the fortune which on his marriage he received from his wife: *Lester* v. *Garland* (1832), 5 Sim. 205; *cf. Mackintosh* v. *Pogose, supra*; but a trust determinable on alienation is valid as against a mortgagee: *Brooke* v. *Pearson* (1859), 27 Beav. 181; *Knight* v. *Browne* (1861), 7 Jur. N. S. 894; 30 L. J. Ch. 649, in the former of which reports it is stated that the property in *Knight* v. *Browne* in fact belonged to the husband; and see *Re Perkins* (1912), 56 Sol. J. 412. It is also valid in the event of an involuntary alienation by process of law in favour of a judgment creditor of the husband: *Re Detmold* (1889), 40 Ch. D. 585; 58 L. J. Ch. 495. *Semble*, property over which the husband has a joint power of appointment only is not property settled by him: *Re Ashby* [1892], 1 Q. B. 872. A simple discretionary trust in favour of the husband and others is valid: *Holmes* v. *Penney* (1856), 3 K. & J. 90; 26 L. J. Ch. 179; and see *Re Tetley* (1896), 66 L. J. Q. B. 111; see also Form 34, *supra*. In some cases, *e.g.*, in a trader's settlement, the first life interest is given direct to the wife. If this form (No. 34B) is used a receiving order, whether or not it is followed by an adjudication, will work a forfeiture as regards any property coming into the hands of the trustees before the order has been annulled: *Re Laye* [1913], 1 Ch. 298; 82 L. J. Ch. 218.

(*w*) *Cf. Re Hodgson* [1913], 1 Ch. 34; 82 L. J. Ch. 31.

same income were payable to him absolutely for his life he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the death of the Husband (which first happens), the trust hereinbefore declared for payment to him of the said income shall determine :

(2) After the determination of the trust aforesaid, then Upon Trust to pay the said income to the Wife during the residue of her life, without power of anticipation during any coverture :

(3) Provided that if the Husband shall be living at the death of the Wife, then during the residue of his life the annual income of the [Husband's] Trust Fund shall be applied for the maintenance and support (*continue as in clause* (3) *of Form No.* 33, *p.* 129, *down to the end of that Form, but describing the Trust Fund, if necessary, as the Husband's, and adding* "intestate" *after* "if he were actually dead").

(4) And after the death of the survivor of the Husband and Wife the capital and income of the [Husband's] Trust Fund shall be held (*Form No.* 37, *p.* 134).

No. 34c.

The like by reference to the "protective trusts."

(1) As to the annual income of the [Husband's] Trust Fund, the same shall, during the lifetime of the Husband, be held on protective trusts for the benefit of the Husband :

(2) (*As in* (2) *of last Form.*)

(3) Provided that if the Husband survives the Wife, then during the residue of his life the said annual income shall be held on the protective trusts for the benefit of the Husband mentioned in paragraph (ii) of sub-section (1) of section thirty-three of the Trustee Act, 1925, and references to the death of the principal beneficiary shall be construed as referring to the death of the Husband intestate.

(4) (*As in* (4) *of last Form.*)

No. 35.

Trusts of Wife's fund, income to her, and annual sum to Husband after her death.

[As to the Wife's Trust Fund] Upon trust to pay the annual income [thereof] of the Trust Fund to the Wife during her life, without power of anticipation during any coverture, and after her death, out of the said income to pay the annual sum of £ —— to the Husband during the residue of his life,(*x*) the same to be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six months from the death of the Wife if the Husband shall be then living (*continue next Form*).

(*x*) If the annual sum is to be made determinable on alienation, &c., Form No. 33 or No. 33a can be adapted.

No. 36.

Trusts after death of Wife, where Husband takes an annuity out of her Fund.

THE [capital and income of the Husband's Trust Fund after the death of the survivor of the Wife and Husband, and also the] capital and income of the [Wife's] Trust Fund after the death of the Wife, and subject to setting apart a portion thereof to provide for payment of the said annual sum of £—— to the Husband, if he shall survive her, shall be [respectively] held (*add next Form*): (*y*)

No. 37.

Trusts for issue as Husband and Wife or the survivor appoint.

In default for children.

IN TRUST for all or such one or more exclusively of the others or other of the issue of the said intended marriage, whether children or remoter issue, (*z*) at such time and, if more than one, in such shares and with such gifts over, and such provisions for maintenance, advancement (*a*) and otherwise at the discretion of any persons and generally in such manner for the benefit of such issue or some or one of them as the Husband and Wife shall by deed, revocable or irrevocable, from time to time or at any time jointly, (*b*) appoint:

And in default of and subject to any such appointment, then as the survivor of them shall by deed, revocable or irrevocable,

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(*y*) Form No. 45, p. 140, is for use in conjunction with this and the last preceding Form. As an alternative method the power of appointment in favour of the husband as survivor in the next Form is sometimes omitted, but this is not generally desirable.

Not necessary to restrict power of appointment among issue in marriage settlements.

Election.

(*z*) This power is good, though the class is not limited in terms within the limits allowed by the rules against perpetuity: *Routledge* v. *Dorril* (1794), 2 Ves. Jun. 356; *Attenborough* v. *A.* (1855), 1 K. & J. 296; *Slark* v. *Dakyns* (1874), L. R. 10 Ch. 35; 44 L. J. Ch. 205; *Re Abbott* [1893], 1 Ch. 54; 62 L. J. Ch. 46; *Re Bowles* [1905], 1 Ch. 371; 74 L. J. Ch. 338; *Re Davies and Kent* [1910], 2 Ch. 35; but in any appointment made under it regard must be had to those limits as from the date of the settlement. If an appointment fails for infringing the rule the persons taking in default will not be put to election: *Re Beale* [1905], 1 Ch. 256; 74 L. J. Ch. 67; *Re Wright* [1906], 2 Ch. 288; 75 L. J. Ch. 500; *Re Nash* [1910], 1 Ch. 1; 79 L. J. Ch. 1; *cf. Re Paul* [1921], 2 Ch. 1; 90 L. J. Ch. 446. As to validating appointments too remote: L. P. Act, 1925, s. 163.

(*a*) If necessary it seems that the whole of an appointed share might, if so provided, be advanced.

Effect of omission to insert joint and surviving powers of appointment among issue in marriage settlements.

(*b*) The omission of a joint power and power for the survivor of the husband and wife to appoint both funds among the issue of the marriage in the usual way is generally detrimental to the interests of the family unless they possess ample property outside the settlement.

(1) One object of these powers is to enable the appointors or survivor to appoint to the issue of a deceased child. If the survivor cannot appoint, then, if a son marries and dies under twenty-one leaving issue, such issue cannot be provided for out of that fund. If the son attains twenty-one before death, the only way thereafter to provide for his issue is to let a share devolve as in default of appointment. This means paying double duty. Clearly the longer the powers of appointment can be kept on foot the better it is for the family.

(2) If the power is severed, then either appointor can, without the consent

or by Will or codicil appoint, but so that under any appointment a child (*c*) shall not, otherwise than by way of advancement, take a vested interest except upon attaining the age of twenty-one years or upon marriage :

And in default of and until and subject to any such appointment IN TRUST for all or any the children or child of the said intended marriage [other than and except such son as hereinafter mentioned and excepted],(*d*) who attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares :

Hotchpot clause.(*e*)

PROVIDED that any child who or whose issue by appointment takes any part of the [Husband's Trust Fund or the Wife's] Trust Fund shall not, in the absence of any direction to the contrary, take any share in the unappointed part without bringing the part appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly.(*f*) (*Add next Form, if required.*)

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of the other, appoint the whole of his or her fund to one child or grandchild to the exclusion of the other issue. This may lead to favouritism, which is guarded against as long as possible by the joint power.

Settlements by the Court.

(3) If the power is severed, then on the death of either husband or wife the issue take vested interests in the fund of the deceased, and the survivor is left with no control over that fund. Hence the children, to the extent of this fund, become independent of the surviving parent. Where, under an executory trust, the husband and wife are to take beneficial interests, the Court will direct a joint power of appointment to be inserted in the settlement: *Re Gowan* (1880), 17 Ch. D. 778 ; 50 L. J. Ch. 248 ; but not where the intention is clear that the children are to take equally : *Re Parrott* (1886), 33 Ch. D. 274 ; see also Theobald, 7th ed., 728, *et seq.*

(*c*) This provision cannot be extended to other issue on the ground of remoteness. It is right that there should be power to appoint a vested interest to a son who marries under the age of twenty-one.

(*d*) The words in brackets are to be used only if the next Form (No. 38) is used. The Forms assume that under the Will or settlement daughters take as tenants in common in tail, if they take at all. In this case a trust for sale would be interposed immediately before the limitation.

(*e*) In calculating the value of a share brought into hotchpot, the sum to be accounted for will be the value of the share at the time of distribution: *Re Kelly* [1910], 1 Ch. 78 ; 79 L. J. Ch. 60 ; but *cf. Re Crocker* [1916], 1 Ch. 25. As to actuarial calculations, see *Re West* [1921], 1 Ch. 533 ; 90 L. J. Ch. 342.

Hotchpot.

(*f*) Where trusts are declared by reference, the two funds do not (unless so expressed) form one fund for the purpose of the hotchpot clause: *Re Marquis of Bristol* [1897], 1 Ch. 946 ; 66 L. J. Ch. 446 ; *Re Cavendish* [1912], 1 Ch. 794 ; 81 L. J. Ch. 400 ; *Re Wood* [1913], 2 Ch. 574 ; 83 L. J. Ch. 59 ; *Re Fraser* [1913], 2 Ch. 224 ; 82 L. J. Ch. 406 ; and see *Hutchinson* v. *Tottenham* [1898], 1 Ir. R. 403. As to the working out of the effect of a hotchpot clause, see *Re Willoughby* [1911], 2 Ch. 581 ; 80 L. J. Ch. 562. Life and reversionary interests are liable to be brought into hotchpot: *Eales* v. *Drake* [1875], 1 Ch. D. 217 ; *Re Heathcote* (1891), W. N. 10.

No. 38.

Clause excluding son entitled to settled estates.

(1) The excepted son hereinbefore referred to who is excluded from taking in default of appointment is an eldest or only son or any other son (*g*) of the said intended marriage who, before attaining the age of twenty-one years, becomes, or would if of full age be, entitled to the possession or to the receipt of the rents and profits of the properties in the County of —— devised by [*or* comprised in] or which may be or become subject to the limitations of the Will of ——, dated, &c. [*or* the Settlement dated, &c., and made between, &c.] (and of which properties the Husband is now tenant for life in possession) or who before attaining that age becomes under the said Will [*or* Settlement] entitled to a freehold interest (*h*) in remainder immediately expectant on the interest for life of the Husband :

(2) If there shall not be any child of the said intended marriage other than and except as aforesaid who attains a vested interest in default of appointment, then the capital of the Trust Fund [Husband and Wife's Trust Funds] shall be held In trust for such eldest son or other excepted son of the said intended marriage as hereinbefore mentioned, if and when he attains the age of twenty-one years, and to be then vested and not before; And if there shall be more than one such excepted son then In trust for the last survivor of such eldest and other excepted sons absolutely if and when he attains the age of twenty-one years, and to be then vested and not before.

No. 39.

Advancement clause (express power).

The Trustees may at any time or times, but with the consent in writing of the Husband (*i*) and Wife or of the survivor of them, if living, raise any part or parts, not exceeding together one-half of the presumptive or vested share of any child or other issue of the said intended marriage, under the trusts aforesaid, and may pay or apply the same for his or her advancement or benefit (*j*) as the Trustees think fit.

(*g*) See *Re Wrottesley* [1911], 1 Ch. 708; 80 L. J. Ch. 457; *Re Cavendish* (1912), 56 Sol. J. 344.

(*h*) See *Re Alexander* [1910], 2 Ch. 225; 79 L. J. Ch. 656.

Consent of bankrupt husband.

(*i*) This express power of advancement will seldom be used in personalty settlements for T. Act, 1925, s. 32, supplies the requisite power. Where the husband is bankrupt, the consent also of the trustee in bankruptcy acting under a direction in bankruptcy is necessary: *Re Cooper* (1884), 27 Ch. D. 565; see also *Re Bedingfeld and Herring* [1893], 2 Ch. 332; 62 L. J. Ch. 430, a case of a power of sale with consent.

"Benefit."

(*j*) The word "benefit" is more extensive than "advancement" (see *Re Watney* (1911), 56 Sol. J. 109), or "preferment," and authorises the payments of debts incurred by the object of the power: *Lowther* v. *Bentinck* (1874), L. R. 19 Eq. 166; 44 L. J. Ch. 197; but *cf. Molyneux* v. *Fletcher*

No. 39A.
Advancement (statutory power). [Variation of power of maintenance.]

The statutory power of advancement applies to this settlement.(*k*) [The statutory power of maintenance shall be exercisable free from any obligation to apply a proportionate part only of income subject to the trusts hereof where other income is applicable for maintenance purposes.]

No. 40.
Power for Wife to surrender life interest.

The Wife may, notwithstanding the restraint on anticipation hereinbefore imposed, surrender her life interest in the vested share of any child or other issue of the said intended marriage in favour of such child or other issue so as to bring such share into possession.(*l*)

No. 41.
Usual trusts in default of children.

If there shall not be any child of the said intended marriage who attains a vested interest under the trust hereinbefore declared in default of appointment, then, Subject to the trusts and powers hereinbefore contained :—

As to Husband's Trust Fund.

(1) The [Husband's] Trust Fund (*m*) and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same, shall, after the death of the Wife and such failure of children as aforesaid, be held In trust for the Husband absolutely :

As to Wife's Trust Fund.

(2) The [Wife's] Trust Fund and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same, shall,(*n*) after the death of

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Advancement clause; construction.

[1898], 1 Q. B. 648; 67 L. J. Q. B. 392. Under a power of advancement money may be raised for maintenance: *Re Breed's Will* (1875), 1 Ch. D. 226; 45 L. J. Ch. 191; and for the payment of legacy duty: *Klug* v. *K.* [1918], 2 Ch. 67; 87 L. J. Ch. 569. On the construction of an advancement clause: *Re Winch* [1917], 1 Ch. 633; 86 L. J. Ch. 403; *Re Hodgson* [1913], 1 Ch. 34; 82 L. J. Ch. 31. Advances must be brought into hotchpot: *Re Sparkes* (1911), 56 Sol. J. 90; T. Act, 1925, s. 32 (1) (b).

(*k*) T. Act, 1925, s. 32, applies to personalty settlements unless the power is expressly excluded: *ib.*, s. 69. This form is inserted as a reminder in case the parties desire to modify the statutory power. As to maintenance: *ib.*, s. 31.

(*l*) This is not a usual provision in a settlement made under the Infant Settlements Act, 1855. If the statutory power of advancement is allowed to take effect it can seldom be required.

Variation where one fund only is settled.

(*m*) Sub-clauses (1) and (2) are applicable where funds are settled by or on behalf of the husband and wife respectively; but where only one fund is settled it should be called the trust fund, and whichever of the Forms is applicable should be used.

Statutory accumulations.

As to the statutory accumulations, see T. Act, 1925, s. 31 (2).

Where husband takes an annuity.

(*n*) See last note. If the husband only takes an annuity the form will be "shall after such failure of children as aforesaid and subject to providing a fund to answer the said annuity of the Husband be held, &c." It is correct to refer to the failure of "children" and not to the Husband and such failure of children as aforesaid, be held In trust for such persons and purposes as the Wife shall, while not under coverture, by deed, revocable or irrevocable, or shall, whether covert or sole, by Will or codicil appoint; (*o*) And in default of and until and subject to any such appointment, Upon the trusts following (that is to say)—

(i) If the Wife shall survive the Husband, then In trust for her absolutely without power to anticipate her expectant interest; (*p*)

(ii) But if she shall die in the lifetime of the Husband, then In trust for the persons who, under the Administration of Estates Act, 1925, would have become entitled thereto as her statutory next of kin at her death if she had died possessed thereof intestate [domiciled in England] [and without ever having been married] [and without leaving a parent or grandparent her surviving], (*q*) such persons to take in the shares, if more than one, and in the events prescribed by the said Act.

"issue"; there is no "trust" for issue; the interests taken by issue under an appointment are covered by the words "Subject to the trusts and powers hereinbefore contained."

Powers of wife in default of children.

(*o*) This Form is still in common use, though it is not now necessary to give the wife a testamentary power of appointment if she survives; see M. W. P. Act, 1893, s. 3; *Re Wylie* [1895], 2 Ch. 116; 64 L. J. Ch. 613; *Re James* [1910], 1 Ch. 157; 79 L. J. Ch. 45. A power of appointment by deed while not under coverture is required, otherwise on dissolution of the marriage it might be necessary to apply to the Divorce Court with reference to the settled property under Jud. Act, 1925, see ss. 191, 192; *Wynne* v. *W.* (1898), 78 L. T. 796; and *cf. Walpole* v. *W.* [1901], P. 196; 70 L. J. P. 49.

Restraint.

(*p*) A restraint on anticipation can be attached to a reversionary interest, and is effectual to prevent alienation until the interest falls into possession: *Re Bown* (1883), 27 Ch. D. at pp. 421, 423; 53 L. J. Ch. 881; *Re Tippett* (1887), 37 Ch. D. 444; *Re Bankes* [1902], 2 Ch. 333; 71 L. J. Ch. 708; see also *Re Game* [1907], 1 Ch. 276; 76 L. J. Ch. 168. Such a restraint is now necessary: M. W. P. Act, 1882, ss. 2, 19.

(*q*) For decisions on the old form, see *Re Smith* [1903], 1 Ch. 373; 72 L. J. Ch. 184; *Re Brydone* [1903], 2 Ch. 84; 72 L. J. Ch. 528; *Re Nightingale* [1909], 1 Ch. 385; 78 L. J. Ch. 196; *Re Morgan* [1920], 1 Ch. 196; 89 L. J. Ch. 97. The expression "statutory next of kin" is to be construed as referring to the persons who would take beneficially under ss. 46 and 47 of the Ad. of E. Act, 1925, see s. 50 (1); this excludes the special provisions as to infants and lunatics in s. 51.

Under s. 46 (1), in default of issue, and subject to the husband's life interest, the parents take, then the brothers and sisters and their issue (the whole blood being preferred), then the grandparents, then the uncles and aunts and their issue, the whole blood being preferred. If the wife has brothers or sisters it may be desired to rule out the parents and grandparents. The husband only takes an absolute interest in priority to the Crown.

"Without ever having been married."

In the case of a settlement by a widow having children by a previous marriage the words "without ever having been married to the

No. 42.

Power to raise and pay sum to Wife.(r)

THE Wife may from time to time, by any writing under her hand, appoint that the Trustees shall raise out of the [Wife's] Trust Fund any sums not exceeding in the whole the net sum of £——, free of duties and costs, and pay the same to the Wife absolutely, or otherwise as she may direct, and such sums shall be forthwith raised and paid by the Trustees accordingly.

No. 43.

Power for Wife to appoint to Husband an annual sum.

(1) THE Wife may, by Will or codicil, appoint that after her death any annual sums not exceeding in the whole the annual sum of £—— shall be paid to or for the benefit of the Husband (s) during the residue of his life, or any less period, out of the annual income of the [Wife's] Trust Fund, and the annual sum or sums so appointed shall be paid accordingly (t):

(2) THE Trustees may set apart investments out of the [Wife's] Trust Fund, the income whereof shall in their opinion at the time of setting apart be sufficient to answer the annual sum so appointed, and thereupon the balance of the [Wife's] Trust Fund may be dealt with or distributed free from the annual sum, and the same shall be charged exclusively on the income for the current year of the investments so set apart.

No. 44.

Power for Wife to —

THE Wife may from time to time [while not under coverture

Settlement by widow having children.

husband of the now intended marriage" should be substituted: see *Emmins* v. *Bradford* (1880), 13 Ch. D. at p. 497; 49 L. J. Ch. 222; *Boyce* v. *Wasbrough* [1922], 1 A. C. 425; 91 L. J. Ch. 369, though if the husband is to be allowed to take, all reference to "without having been married" should be omitted.

Foreign domicile of husband.

If the husband has or intends to acquire a foreign domicile, after the word "intestate" the words "domiciled in England," are required. Clauses should also be added to the settlement providing for its being construed according to English law, statutory or otherwise, against any person being appointed a trustee who is not resident in the United Kingdom, and giving the wife a general power of appointment over any property or savings of hers excluded from the settlement. To insert a trust in favour of the next of kin under the old law would be fatuous, they took whether or not they married or attained twenty-one, thus in many cases involving payment of two sets of death duties. If the range given by Ad. of E. Act, 1925, s. 46, before the Crown takes, is not wide enough, this can be extended; but this would seldom happen.

Next of kin under the old law.

(r) This object may be achieved in a modified manner by giving the wife power to revoke part of the settlement with the consent of the trustees: see Form No. 71, p. .

(s) This power should be confined to the intended husband, and provision for a future husband, when required, should be made by a power to resettle on a future marriage: see Forms Nos. 46 and 47, pp. 140, 142; see also *Re Hancock* [1896], 2 Ch. 173; 65 L. J. Ch. 690; *Foakes* v. *Jackson* [1900], 1 Ch. 807; 69 L. J. Ch. 352; and *cf. Re Parker's Policies* [1906], 1 Ch. 526; 75 L. J. Ch. 297. As to the power of the Court to order payment of the income which might have been appointed to an innocent husband who has obtained a divorce, see *Hartopp* v. *H.* [1899], P. 65; 68 L. J. P. 33.

(t) If the husband surviving has a power of appointment among issue, Form No. 45, p. 140, should be used.

appoint income to Husband.(*u*)

by deed, revocable or irrevocable, or whether covert or sole] by Will or codicil appoint to or in favour of [any] the Husband in case he survives her during the residue of his life, or any less period, all or any part of the annual income of the [Wife's] Trust Fund: And upon any such appointment the powers and trusts herein limited to take effect after the death of the Wife shall take effect subject to the interest limited by any such appointment, and any such appointment may be made with a gift over and discretionary trust on bankruptcy or otherwise for the benefit of the [such] Husband, the issue of the now intended marriage and other persons [corresponding to the discretionary trust hereinbefore declared concerning the annual income of the Husband's Trust Fund, with such variations (*v*)] as the Wife may think fit.

No. 45.

Trust of surplus income after payment of annuity, or part of the income to Husband.(*w*)

If the Husband survives the Wife, then [the annual income of the [Wife's] Trust Fund or] so much of the annual income [thereof] of the [Wife's] Trust Fund as shall not be payable to him under this deed shall, during the residue of his life, be paid or applied to or for the benefit of the children or issue of the said intended marriage or otherwise in like manner as the same would for the time being be payable or applicable if the Husband were dead, and having regard to any appointments which for the time being have actually been made under the powers aforesaid, but so that such payment or application shall not be suspended on account of the possibility that he may make any future appointment or revoke an appointment.

No. 46.

Power for Wife to make settlement on future marriage.(*x*)

(1) If the Wife shall marry again, then, without prejudice to any appointment which may have already been made under the powers hereinbefore contained, she may, either in contemplation of or after any subsequent marriage, from time to time by deed, revocable or irrevocable, or by Will or codicil, revoke the trusts,

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(*u*) See notes to last Form.

(*v*) These words in square brackets will only be used where the husband has a protected life interest in his own fund. The appointment, if made of a share of the income, may provide for setting apart investments to answer the share.

(*w*) This clause is only used where the surviving husband has a power of appointment among issue which prevents the immediate distribution of the fund, after setting apart what is required for payment to him of the annuity or part of the annual income: see Forms Nos. 35, 36, 43 and 44. The words in square brackets are required only in connexion with Form No. 43 or No. 44.

When power to make future settlement required.

(*x*) A power to make a future settlement should always be given if there is a covenant to settle after-acquired property. After a divorce the settlement can be varied so as to prevent the exercise of such a power as this to powers and provisions hereinbefore declared concerning any part of the [Wife's] Trust Fund, not exceeding together the following shares or share thereof (that is to say)—

(i) If there shall be but one child and no more of the now intended marriage who attains the age of twenty-one years, or being female marries under that age, not exceeding two-third shares thereof;

(ii) And if there shall be two or more such children, not exceeding one-half thereof;

And may appoint that the part or parts to which such revocation extends shall, after her death, be held Upon such trusts and subject to such powers and provisions and generally in such manner for the benefit of any husband (*y*) who may survive her, or any child, children or other issue, or any one or more exclusively of the children or other issue of such subsequent marriage (including powers of advancement in favour of any issue, similar to the statutory power applicable for the benefit of issue of the now intended marriage) as the Wife may think proper, but so that, subject to the trusts, powers and provisions so appointed, the part or parts of the [Wife's] Trust Fund to which any such revocation and appointment relates, or so much thereof respectively as shall not have become vested or been applied under any of such trusts, powers or provisions, shall devolve under this deed in the same manner as if no revocation or appointment had been made under this present power:

(2) PROVIDED that under an exercise of the power aforesaid any husband who may survive the Wife shall not take more than a life interest, and that any child (*z*) of the Wife shall

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the prejudice of the innocent party: *Maudslay* v. *M.* (1877), 2 P. D. 256, 261; 47 L. J. P. 26; *Noel* v. *N.* (1885), 10 P. D. 179; 54 L. J. P. 73; *Day* v. *D.* (1898), 78 L. T. 358; *Hartopp* v. *H.* (1899), P. 65; 68 L. J. P. 33. When the power is made to depend on survivorship, the Court will not as a rule vary the settlement so as to make the power exercisable during the life of the guilty party: *Pollard* v. *P.* [1894], P. 172; 63 L. J. P. 104; though there is jurisdiction: *Whitton* v. *W.* [1901], P. 348; 71 L. J. P. 10; *Roberts* v. *R.* [1906], P. 142; 75 L. J. P. 48; cf. *Atkins* v. *A.* [1913], P. 211; 83 L. J. P. 18.

(*y*) The husband may be a person unborn at the date of the settlement: *Re Abbott* [1893], 1 Ch. 54; 62 L. J. Ch. 46; and *cf. Wainwright* v. *Miller* [1897], 2 Ch. 255; 66 L. J. Ch. 616; *Re Gage* [1898], 1 Ch. 498; 67 L. J. Ch. 200; and see *Re Davies and Kent* [1910], 2 Ch. 35; 79 L. J. Ch. 689. Husband; unborn person.

(*z*) This provision cannot be extended to other issue on the ground of remoteness. It would apply to the usual trust in default of appointment, as well as to appointed interests, and according to the usual practice is confined to sons who attain twenty-one.

not, except by way of advancement, become entitled to any share of the [Wife's] Trust Fund unless such child attains the age of twenty-one years, or being female marries under that age:

(3) PROVIDED ALSO, that an only child or any two or more children and any issue of a child or children collectively of the Wife by subsequent marriages, shall not, under an exercise of the said power, become entitled to a larger share of the [Wife's] Trust Fund than such only child or such children collectively would have taken in case the [Wife's] Trust Fund had been equally divided between all the children of the Wife by every marriage who attain the age of twenty-one years, or being female marry under that age:

(4) PROVIDED FURTHER that the power last aforesaid may be exercised so often as the Wife shall marry, so that the total amount ultimately appointed under all revocations and appointments made pursuant thereto shall not exceed, according to the event, the shares or share hereinbefore specified of the [Wife's] Trust Fund.

No. 47.

Power for Husband or Wife to make settlement on future marriage.(*a*)

(1) IF the Husband or Wife (as the case may be) shall marry again, then, without prejudice to any appointment which may have already been made under the powers hereinbefore contained, he, so far as regards the Husband's Trust Fund, and she, so far as regards the Wife's Trust Fund, may, either in contemplation of or after any subsequent marriage, make such revocation and appointment with respect to those funds respectively as hereinafter mentioned (that is to say), may from time to time by deed, revocable or irrevocable, or by Will or codicil, revoke the trusts, powers and provisions hereinbefore declared concerning any part of the Husband's Trust Fund or the Wife's Trust Fund (as the case may be) not exceeding together the following shares or share thereof (that is to say)—

(i) If there shall be but one child and no more of the now intended marriage who attains the age of twenty-one years, or being female marries under that age, not exceeding two-third shares thereof;

(ii) And if there shall be two or more such children, not exceeding one-half thereof;

And may appoint that the part or parts to which such revocation extends shall, after his or her death (as the case may happen)

(*a*) See notes to last Form. When practically the whole of the fortunes of both are settled, then Form No. 47 is generally used.

be held Upon such trusts and subject to such powers and provisions, and generally in such manner for the benefit of any wife who may survive him or any husband who may survive her (as the case may be) or any child, children or other issue, or any one or more exclusively of the children or other issue, of such subsequent marriage (including powers of advancement in favour of any issue, similar to the statutory power applicable for the benefit of the issue of the now intended marriage) as the Husband or the Wife (as the case may be) may think proper, but so that, subject to the trusts, powers and provisions so appointed, the part or parts of the fund to which any such revocation and appointment relates, or so much thereof respectively as shall not have become vested or been applied under any of such trusts, powers or provisions, shall devolve under this deed in the same manner as if no revocation or appointment had been made under this present power:

(2) PROVIDED that under an exercise of the power aforesaid any wife who may survive the Husband or any husband who may survive the Wife (as the case may be) shall not take more than a life interest, and that any child of the person making the appointment shall not (except by way of advancement) become entitled to any share of the fund to which the appointment relates, unless such child attains the age of twenty-one years, or being female marries under that age:

(3) PROVIDED ALSO, that an only child or any two or more children and any issue of a child or children collectively of the person making the appointment by subsequent marriages shall not, under an exercise of the said power, become entitled to a larger share of the fund to which the appointment relates than such only child or such children collectively would have taken in case that fund had been equally divided between all the children of the person making the appointment by every marriage who attain the age of twenty-one years, or being female marry under that age:

(4) PROVIDED FURTHER, that the power last aforesaid may be exercised so often as the person having the power shall marry, so that the total amount ultimately appointed under all revocations and appointments made pursuant thereto shall not exceed, according to the event, the shares or share hereinbefore specified.

SECTION IV.

COVENANTS TO SETTLE AFTER-ACQUIRED PROPERTY, &c.

No. 48.

Agreement to settle after-acquired property of Wife.(b)

(1) THE Wife hereby covenants with the Trustees, that if she shall at any time after the now intended marriage and during the same coverture become entitled in any manner and

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(b) Where the words "to which the husband in her right" were added, as the husband's title did not arise until marriage, the covenant covered chattels of the wife which, under the old law, were vested in the husband on marriage: *Williams* v. *Mercier* (1884), 10 A. C. 1; 54 L. J. Q. B. 148.

Covenant to settle after-acquired property.

With respect to the construction of provisions of this nature the following points have been decided or provided for by statute:—

Construction of covenant to settle property to which wife becomes entitled during coverture.

(1) A covenant to settle property to which the wife shall *become* entitled during the coverture includes property to which she is contingently entitled at the date of the marriage, and which falls into possession during coverture: *Re Williams* [1911], 1 Ch. 441; 80 L. J. Ch. 249; but does not include property to which she is entitled for a vested interest in possession at the time of the marriage: *Otter* v. *Melvill* (1848), 2 De G. & Sm. 257; 17 L. J. Ch. 345; *Wilton* v. *Colvin* (1856), 3 Drew. 617; 25 L. J. Ch. 850; *Churchill* v. *Shepherd* (1863), 33 Beav. 107; and see Norton on Deeds, 593, 594. Nor property in which she has an interest in reversion, whether vested or contingent, which does not fall into possession until after the coverture has determined: *Re Pedder* (1870), L. R. 10 Eq. 585; 40 L. J. Ch. 77; *Re Michell's Trusts* (1878), 9 Ch. D. 5; 48 L. J. Ch. 50. Nor property to which she becomes entitled while a judicial separation is in force: *Davenport* v. *Marshall* [1902], 1 Ch. 82; 71 L. J. Ch. 29; *Re Bankes* [1902], 2 Ch. 333; 71 L. J. Ch. 708. But it does include property to which she becomes entitled between the date of a decree *nisi* and a decree absolute: *Sinclair* v. *Fell* [1913], 1 Ch. 155; 82 L. J. Ch. 105.

Reversionary interests.

(2) A covenant in this form generally includes property which, being reversionary at the time of the marriage, falls into possession during the coverture: Norton, 597-8; but see *Re Bland's Settlement* [1905], 1 Ch. 4; 74 L. J. Ch. 28; *Re Capel* (1914), W. N. 378; it does include property to which the wife becomes entitled in reversion during the coverture, and which falls into possession after it has determined, if the husband survives: *Hughes* v. *Young* (1863), 9 Jur. N. S. 376; 32 L. J. Ch. 137; or if the wife survives and has joined in the covenant: *Butcher* v. *B.* (1851), 14 Beav. 222; *Re D'Estampes* (1884), 32 W. R. 978; 53 L. J. Ch. 1117; see also *Lloyd* v. *Prichard* [1908], 1 Ch. 265; 77 L. J. Ch. 183, where the words of the covenant were very wide; also 133 L. T. Newsp. 227. The covenant cannot be enforced by volunteers: *Re D'Angibau* (1880), 15 Ch. D. 228; 49 L. J. Ch. 756; *A.-G.* v. *Jacobs Smith* [1895], 2 Q. B. 341; 64 L. J. Q. B. 605; *Re Plumptre* [1910], 1 Ch. 609; 79 L. J. Ch. 340 (which case also decided that gifts by a husband during coverture are caught by the covenant): *Re Pryce* [1917], 1 Ch. 234; 86 L. J. Ch. 383; Norton on Deeds, 606; Bky. Act, 1914, s. 42; *Re Bulteel* [1917], 1 Ch. 251; 86 L. J. Ch. 294. But can be enforced in favour of persons within the marriage consideration, notwithstanding that the trustees' legal remedy on the covenant is barred by lapse of time: *Pullan* v. *Koe* [1913], 1 Ch. 9; 82 L. J. Ch. 37. As to the enforcement of a contract in a voluntary settlement: *Re Cavendish Browne* (1916), W. N. 341; *cf. Carter* v. *Hungerford* [1917], 1 Ch. 260; 86 L. J. Ch. 162; also *Re Bulteel* [1917], 1 Ch. 251; 86 L. J. Ch. 294; *Re Dent* [1923], 1 Ch. 113.

Not enforceable by volunteers.

(3) A covenant to settle property to which the wife is entitled at the date of the settlement, or of the marriage, includes property in which she has a reversionary interest at the time of the marriage (whether vested or contingent) but which does not fall into possession until the coverture has determined: *Re Mackenzie's Settlement* (1867), L. R. 2 Ch. 345; 36 L. J. Ch. 320; *Agar* v. *George* (1876), 2 Ch. D. 706; but it does not include an undefined *spes successionis*: *Re Mudge* [1914], 1 Ch. 115; 83 L. J. Ch. 243.

Covenant extending to wife's property at time of marriage includes reversion falling into possession after coverture.

(4) A provision for settling after-acquired property of the wife binds property given for her separate use, if it is in the form of a covenant by her: *Coventry* v. *C.* (1863), 32 Beav. 612; *Re Allnutt* (1883), 22 Ch. D. 275; 52 L. J. Ch. 299; or of a general agreement between the parties, or even, under the old law, of a covenant by the husband, unless in the two latter cases the acts to be done for vesting the property in the trustees had to be done by the husband alone: *Dawes* v. *Tredwell* (1881), 18 Ch. D. 354; *Re Smith* (1900), W. N. 75.

As to property given to wife for separate use.

(5) Section 2 of the M. W. P. Act, 1907, provides that:—

M. W. P. Act, 1907, s. 2.

Settlements of a married woman's separate property.

"(1) Notwithstanding section nineteen of the M. P. W. Act, 1882, a settlement or agreement for a settlement made after the commencement of this Act by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married, shall not be valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age.

"(2) But if she dies an infant any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death and which he could have bound or disposed of if this Act had not been passed.

"(3) Nothing in this section shall render invalid any settlement or agreement for a settlement made or to be made under the provisions of the Infant Settlements Act, 1855."

This section meets the decisions in *Stevens* v. *Trevor-Garrick* [1893], 2 Ch. 307; 62 L. J. Ch. 660, and *Buckland* v. *B.* [1900], 2 Ch. 534; 69 L. J. Ch. 648.

It is conceived that under sub-s. (2) the husband can bind such interests as he becomes entitled to under the Ad. of E. Act, 1925, on the death of his infant wife after 1925; also that he can bind any equitable estate by the curtesy taken in respect of an entailed interest of the wife: L. P. Act, 1925, s. 130.

Query how far valid settlement can be made if wife dies an infant, leaving husband surviving.

(6) A covenant by the wife for settling after-acquired property does not extend to property of which she is tenant in tail: *Re Dunsany's Settlement* [1906], 1 Ch. 578; 75 L. J. Ch. 356; but a tenant in tail can convey a base fee determinable by entry of the issue who would have been tenant in tail in possession if the base fee had not been created: *Doe* v. *Woodroffe* (1849), 2 H. L. C. 811; 18 L. J. Ex. 498; and see 50 Sol. J. 570, 591; 55 Sol. J. 378–9, as to suggested alterations in the form of covenant. She can, if in possession, devise the property under L. P. Act, 1925, s. 176.

Estate tail.

(7) A covenant by the wife for settling after-acquired property does not operate as an exercise of a general power of appointment or as a covenant to exercise such a power: *Re Gerard* (1888), W. N. 35; but may be so worded as to cover property subject to a power: *Re Anstis* (1886), 31 Ch. D. 596; but see *Tremayne* v. *Rashleigh* [1908], 1 Ch. 681; 77 L. J. Ch. 365. If the wife is herself entitled in default of appointment, her interest will be bound, and she cannot defeat the covenant by an appointment: *Re O'Connell* [1903], 2 Ch. 574; 72 L. J. Ch. 709. Such a covenant does not include a life interest or an annuity, in the absence of any indication in the deed of a contrary intention: *Re Dowding* [1904], 1 Ch. 441; 73 L. J. Ch. 194; *cf. Re Butler* [1916], 1 Ir. R. 66.

Power of appointment, life interests, and annuities.

Does not apply where wife is restrained or where the property is in a country where covenant cannot be enforced.

(8) Such a covenant does not bind property which the wife is restrained from disposing of: *Re Currey* (1886), 32 Ch. D. 361; 55 L. J. Ch. 906; and see *Re Bankes* [1902], 2 Ch. 333; 71 L. J. Ch. 708; or property in a country where the covenant could not be enforced: *Re Pearse* [1909], 1 Ch. 304; 78 L. J. Ch. 73.

Whether wife put to election, if an infant.

(9) Formerly if the wife, being an infant, entered into a covenant to settle her after-acquired property, she had to elect, on coming of age, whether she would perform such covenant, or compensate the persons disappointed by her refusal out of any interest given to her by the same instrument in her husband's property: *Codrington* v. *C.* (1875), L. R. 7 H. L. 854; 45 L. J. Ch. 660; and see *Edwards* v. *Carter* [1893], A. C. 360; 63 L. J. Ch. 100; *Viditz* v. *O'Hagan* [1900], 2 Ch. 87; 69 L. J. Ch. 507; *Re Bankes, supra*; unless by the terms of the instrument she was restrained from anticipating: *Smith* v. *Lucas* (1881), 18 Ch. D. 531; *Re Vardon* (1885), 31 Ch. D. 275; 55 L. J. Ch. 259; *cf. Haynes* v. *Foster* [1901], 1 Ch. 361; 70 L. J. Ch. 302. Not followed in *Re Hargrove* [1915], 1 Ch. 398; 84 L. J. Ch. 484; *Bolster* v. *B.* [1916], 1 I. R. 57. It is conceived that in view of the M. W. P. Act, 1907, s. 2, an infant wife ought now to be expressly put to her election, by a forfeiture clause or otherwise, to confirm the settlement on attaining full age, though that section would not, of necessity, free her from the obligation to elect: see *Carnell* v. *Harrison* [1916], 1 Ch. 328; 85 L. J. Ch. 321.

Does not include property acquired after coverture or between a divorce decree nisi and absolute.

(10) Such a covenant is restricted to property acquired during coverture, though the words "during the coverture" are omitted, if the wife survives: *Re Coghlan* [1894], 3 Ch. 76; 63 L. J. Ch. 671; but not if the husband survives: *Fisher* v. *Shirley* (1889), 43 Ch. D. 290; 59 L. J. Ch. 29. It does include property acquired after a decree *nisi*; before it has been made absolute: *Sinclair* v. *Fell* [1913], 1 Ch. 155; 82 L. J. Ch. 105.

(10A) A bonus received under the Irish Land Purchase Acts is included in such a covenant: *Re Livingstone* (1917), W. N. 90.

Declaration that covenant shall not apply inoperative.

(11) Where a person gives to a married woman who has entered into such a covenant an interest in property of such a nature as to come within its terms, any declaration of the donor's intention that the property shall not be affected by the covenant is inoperative: *Scholfield* v. *Spooner* (1884), 26 Ch. D. 94; 53 L. J. Ch. 777; *Re Wharton* (1910), 102 L. T. 531; *Re Thorne* [1917], 1 Ch. 360; 86 L. J. Ch. 261. Hence the necessity for the words in brackets in the text.

Life interest, savings.

(12) A life interest subject to forfeiture on alienation is not within the covenant: *Re Crawshay* [1891], 3 Ch. 176; 60 L. J. Ch. 583; nor accumulations or savings of the wife's income: *Re Clutterbuck* [1905], 1 Ch. 200; 73 L. J. Ch. 698; *Mackenzie* v. *Allardes* [1905], A. C. 285.

Legacy duty deducted.

(13) A legacy of £500, reduced to £450 after payment of legacy duty, is not within a covenant to settle sums of £500 or upwards: *Re Pares* [1901], 1 Ch. 708; 70 L. J. Ch. 426.

Endowment policy.

(14) An endowment policy on the husband's life for £500 is not, where the wife receives the money after his death, within a covenant to settle sums exceeding £200 if the policy was not worth £200 at the time when it was effected: *Re Harcourt* (1911), 56 Sol. J. 72.

Covenant by husband to settle his after-acquired property.

(15) A covenant by a husband to settle his after-acquired property is unusual. Where a husband covenanted to settle property to which he should become entitled "by devise, payment, purchase, or otherwise," the covenant was held to include a policy effected by him on his life as being acquired by purchase. Whether the covenant could be enforced as a general covenant to assign all the husband's property was treated as doubtful, but the covenant was held divisible: *Re Turcan* (1888), 40 Ch. D. 5; 58 L. J. Ch. 101; and see *Re Reis* [1904], 2 K. B. 769, at pp. 782, 783; 73 L. J. K. B. 929; aff.

for any estate or interest (*c*) to any real or personal property exceeding in value £—— at one time and from one and the same source, except as follows—

(i) Gifts of any description from the Husband to the Wife ;(*d*)

(ii) Any estate or interest acquired by the Wife by virtue of any disentailing assurance which may hereafter be made by her ;

(iii) Jewels, trinkets, ornaments, furniture, plate, china, glass, pictures, prints, books and other chattels passing by delivery, and not being securities for money (*e*) ;

(iv) Property which, if bound by this covenant, would be forfeited or lost ;

(v) Property to which an express contrary direction is contained in the instrument under which it is acquired, or in any memorandum signed by the donor or appointor at the time of the disposition and of which notice is received ;(*f*)

(which excepted properties, and also any property excepted from this covenant as not exceeding in value £——, it is hereby agreed shall belong to her absolutely) :

THEN and in every such case she and all other necessary parties will, at the cost of the trust estate as soon as may be, and to the satisfaction of the Trustees, convey such real or personal property to the Trustees UPON TRUST to sell, call in, or convert into money the part or parts thereof not consisting of money, but with power for the Trustees to postpone such sale, calling in and conversion so long as they may think fit, and to retain

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sub nom. Clough v. *Samuel* [1905], A. C. 442 ; 74 L. J. K. B. 918 ; *Re Ridley* (1911), 55 Sol. J. 838.

The covenant by wife is not "usual."

(16) An agreement to settle after-acquired property of the wife is not a "usual" clause to be inserted without instructions : *Re Maddy* [1901], 2 Ch. 820 ; 71 L. J. Ch. 18.

Stamp.

It is desirable to exclude property to which the wife is entitled at the date of marriage because of the difficulty in ascertaining the proper stamp and also of deciding what property has or has not been caught by such a covenant : *cf. Re Simpson, infra ; Re Mudge, infra.* The covenant to settle after-acquired property carries a 10*s.* stamp.

(*c*) A *spes successionis* is not an "estate or interest" : *Re Simpson* [1904], 1 Ch. 1 ; 73 L. J. Ch. 53 ; *Re Mudge* [1914], 1 Ch. 115 ; 83 L. J. Ch. 243.

(*d*) See *Re Plumptre* [1910], 1 Ch. 609 ; 79 L. J. Ch. 340 ; *Leigh White* v. *Ruttledge* [1914], 1 Ir. R. 135 ; *Re Pryce* [1917], 1 Ch. 234 ; 86 L. J. Ch. 383.

(*e*) As to the effect of such a clause with regard to a share of personalty passing under an intestacy : *Vanneck* v. *Benham* [1917], 1 Ch. 60 ; 86 L. J. Ch. 7.

(*f*) The last exception is generally desirable.

investments transferred under this covenant, and to dispose of the annual income thereof in like manner as the annual income of the [Wife's] Trust Fund, and so that a reversionary interest be not sold before it falls into possession unless the Trustees see special reason for sale :(*g*)

Trusts declared by reference.

(2) The Trustees shall stand possessed of the money to arise from such sale, calling in, or conversion, and of any part of the said property received in money Upon the trusts and subject to the powers and provisions hereinbefore declared concerning money forming part of the [Wife's] Trust Fund, or as near thereto as circumstances will permit, and so as to form one fund (*h*) for all purposes, including the hotchpot provision, with the [Wife's] Trust Fund.

As to life interests and annuities.

(3) Provided that any annuity or the income of any other real or personal property limited to or held in trust for the Wife for her life only or for any term of years determinable by notice or otherwise on or after her death, is not to be sold without her consent in writing, and if not sold and until sale thereof (if any) is to be paid to her without power of anticipation during any coverture.

Exoneration of Trustees.

(4) Provided also, that the Trustees shall not be made accountable in respect of any real or personal property becoming subject to the covenant lastly hereinbefore contained unless and until the same shall have been actually conveyed, assigned, paid or transferred to them, nor shall they be chargeable with breach of trust or made liable in any way for not taking any proceedings to get in the same real or personal property or any part thereof unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested hereunder, and unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken.

No. 49.

Covenant by Husband to keep up

(1) The Husband hereby covenants with the Trustees that if the said intended marriage shall be solemnised—

(i) He will not by any act or omission cause or allow the

(*g*) The rule in *Howe* v. *E. of Dartmouth* (1802), 7 Ves. 137a, does not apply to settlements: *Re Van Straubenzee* [1901], 2 Ch. 779; 70 L. J. Ch. 825; and is ruled out by L. P. Act, 1925, s. 28 (2), and Ad. of E. Act, 1925, s. 33 (5), where those sections apply; *Re Brooker* [1926], W. N. 93.

(*h*) See *Re Marquis of Bristol* [1897], 1 Ch. 946; 66 L. J. Ch. 446; *Re Cavendish* [1912], 1 Ch. 794; 81 L. J. Ch. 400; cf. *Re Wood* [1913], 2 Ch. 574; 83 L. J. Ch. 59; *Re Fraser* [1913], 2 Ch. 224; 82 L. J. Ch. 406; *Re Campbell* [1922], 1 Ch. 551; 91 L. J. Ch. 433.

policy [policies] hereby assigned, or any policy substituted therefor as hereinafter provided, to become void or voidable,(*j*) and will during his life from time to time duly pay all money payable and do all things necessary for keeping on foot the said policy [policies], or any policy substituted as aforesaid, or for restoring the same respectively if and when voidable, and

policy on his life.(*i*)

(ii) If any such policy shall become void will at his own cost effect on his life a new substituted policy or policies, with such office and in such names as the Trustees shall direct, and for an amount equal to the sum which would have been payable under the void policy if it had not become void and the Husband had died at the time when it became void [*or in the case of an endowment policy* "and maturing in the like events and at the same time as the void policy would have matured had it not become void"], and

(iii) Will deliver, and if necessary will also assign, every such substituted policy, and deliver the receipt for every such payment to the Trustees, and

(iv) Will not do or suffer any act or thing by means whereof the Trustees may be prevented from receiving any money assured by any policy, whether original or substituted, subject to the trusts hereof:

Power for Trustees to keep up or restore policy or effect new policy.

(2) THE Trustees may at any time, in their absolute discretion, apply any income of the Trust Fund[s hereinbefore settled], or if income be insufficient then any capital, in making any payments proper for keeping on foot or restoring any subsisting policy, or for effecting, keeping on foot, or restoring any substituted policy,(*k*) [but so that as between the Husband's Trust Fund and the Wife's Trust Fund the said payments shall be made primarily out of the Husband's Trust Fund, and payments (if any) made out of the Wife's Trust Fund shall be repaid to it as soon as may be out of the Husband's Trust Fund (*l*)]: And

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Where policy settled and no covenant to keep it on foot.

(*i*) Where a policy is settled and the settlor does not covenant to keep it on foot, but pays the premiums voluntarily and then becomes bankrupt and dies, his trustee in bankruptcy is not entitled to a proportion of the policy money as a "settlement" within the meaning of the Bkcy. Act, 1883, s. 47 (see now Bkcy. Act, 1914, s. 42): *Re Harrison* [1900], 2 Q. B. 710; 69 L. J. Q. B. 942.

(*j*) See *Dormay* v. *Borrodaile* (1847), 10 Beav. 335; 16 L. J. Ch. 337, as to the effect of these negative words.

(*k*) These words alone do not enable trustees to effect a new policy in substitution for one which has actually lapsed: *Re Jewell* [1919], 2 Ch. 161; 88 L. J. Ch. 357.

Variation where one

(*l*) Omit these words in brackets if there is only one trust fund settled;

every policy so effected, and the money payable thereunder, shall be held and applied upon the trusts and subject to the powers and provisions hereinbefore declared concerning the policy hereby assigned, and the money payable thereunder:

Limitation of liabilities of Trustees.

(3) It shall not be obligatory on the Trustees to enforce any covenant hereinbefore contained in reference to any policy, whether original or substituted, or to apply any income or capital in making payments for keeping on foot or restoring any policy, unless when required so to do in any specific case by writing signed by some person, or the guardian of some person, beneficially interested: And unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken, and any omission or neglect by the Trustees in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust, and the Trustees shall not be responsible on account of any policy becoming void through any means except their own omission or neglect when so required, and upon due provision made as aforesaid:

Power to surrender or sell policy or substitute another policy.

(4) Any bonus or any part of any bonus at any time declared in respect of the [any] policy hereby assigned or any substituted policy, and capable of being so applied, may, instead of being added to the money assured by the policy, be applied at the option of the Husband in the reduction or extinction, either immediately or as from any future date, of the future premiums on such policy; And if the Trustees consider that circumstances render it expedient they may, without being liable to account for the exercise of their discretion, surrender or sell the said policy or any substituted policy or may exchange such policy for a policy on which the premiums are fully paid up, but so that all money received on a surrender or sale shall, during the life of the Husband, be held upon trust for accumulation (*m*) by

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fund only settled.

or if the single fund belongs to the wife, substitute the following words:—
[but so that all money received by the Trustees under any such policy shall be primarily charged, in priority to the trusts, powers and provisions hereinbefore declared or referred to concerning the same, with the repayment to the Trust Fund of all such payments thereout as aforesaid].

Accumulations.

(*m*) The husband being the settlor, this trust is not contrary to L. P. Act, 1925, s. 164: *Bassil* v. *Lister* (1851), 9 Hare, 177; 20 L. J. Ch. 641; nor is a trust in a Will for the payment of premiums on a sinking fund policy taken out in respect of leaseholds: *Re Gardiner* [1901], 1 Ch. 697; 70 L. J. Ch. 407, investing the same and all resulting income in any investments hereby authorised, and after his death the said money and accumulations and investments shall be held upon the trusts hereinbefore declared or referred to concerning the money which, but for such surrender or sale, would have been receivable under such policy on his death and the investments thereof, so as to replace so far as may be such last-mentioned money.

No. 50.

Covenant by Wife's father to pay annual sum.(n)

(1) THE Father (*Wife's father*) hereby covenants with the Trustees, and also as a separate covenant with the Wife, that if the said intended marriage shall be solemnised within six months from the date hereof the Father [or his representatives] will, during so much of his life [or the life of his present wife if surviving him] as the Wife or any of the issue of the now intended marriage shall be living, pay to the Trustees the annual sum of £——, free from all deductions except income tax, such annual sum to commence from the day of the solemnisation of the said intended marriage, and to be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the expiration of six months from the solemnisation of the said intended marriage :

Application of annual sum.

(2) THE Trustees shall pay and apply the said annual sum of £—— to the persons and in the manner to whom and in which the annual income of the [Wife's] Trust Fund shall be payable or applicable [or would be payable or applicable in case the same had been received] :

Trustees not bound to sue.

(3) PROVIDED that it shall not be obligatory upon the Trustees to enforce the foregoing covenant or any part thereof unless when required so to do in any specific case by writing signed by some person or the guardian of some person beneficially interested, and unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken, and any omission or neglect by the Trustees in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust.

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and *cf. Re Hurlbatt* [1910], 2 Ch. 553 ; 80 L. J. Ch. 29 ; 1 Wolst. & Cherry, 11th ed., 416–23. A sale may result in more being obtained from the policy than the office's surrender value.

Surrender of life interest.

(n) Where a reversionary interest is settled it is better, when practicable ; to surrender wholly or partially the life interest than to covenant to pay an annuity equal to the income which would be received if the interest had fallen into possession.

SECTION V.

POWERS OF TRUSTEES.

No. 51.

Investment clauses.

Range of authorised investments including land.

(1) MONEY liable to be invested under the trusts hereof may be invested—

(i) In or on any investments for the time being authorised as investments for trust money ; or

(ii) On real or leasehold securities (*o*) in England, Wales or Northern Ireland [or in any British Dominion, Colony, State or Dependency], but not in the Irish Free State (whether by way of registered charge or otherwise [or subject to incumbrances or not]) ; or

(iii) In or on the stock or securities (*p*) of any British Dominion, Colony, State or Dependency (other than the Irish Free State), or any province thereof,(*q*) or of any foreign Government or State (except Russia), or of any municipal corporation, power, gas, electric light, harbour or local authority in England, Wales, or Northern Ireland, or in any British Dominion, Colony, State or Dependency, other than the Irish Free State ; or

(iv) In or on the bonds, mortgages, debentures or debenture stock or guaranteed or preference [or ordinary] stock (*r*) or shares (*p*) of any [railway, tramway, canal, water, dock, harbour, electric light or power, gas, or other like] company,(*s*) public or

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"Securities."

(*o*) The word "securities," where the context so admits, includes stocks and shares : *Re Rayner* [1904], 1 Ch. 177 ; 73 L. J. Ch. 111 ; *Re Gent and Eason* [1905], 1 Ch. 386 ; 74 L. J. Ch. 333, and see T. Act, 1925, s. 68 (13).

Freehold ground rents.

As to freehold ground rents, see *Re Mordan* [1905], 1 Ch. 515 ; 74 L. J. Ch. 319 ; *Tapp* v. *London, &c., Docks Co.* (1905), 74 L. J. Ch. 523 ; *Re Gent and Eason, supra* ; they must be conveyed on trust for sale if they are purchased : L. P. Act, 1925, s. 32 ; but this part of the clause only relates to loans on the security of land. As to powers of investment generally : T. Act, 1925, ss. 1 to 11. It is frequently convenient to place the investment clauses in a schedule.

Where right of redemption becomes barred.

Where trust money is invested on mortgage, and the right of redemption becomes barred, the land is held by the trustees on trust for sale : L. P. Act, 1925, s. 31.

Bearer securities.

(*p*) Add if desired, "not payable to bearer." On account of savings in reference to stamp duties, and for other reasons, bearer securities are now recommended, see T. Act, 1925, s. 7.

Colonial stock.

(*q*) A power to invest in stock of any British Colony or Dependency does not authorise investment in an individual province of a dependency : *Re Maryon-Wilson* [1912], 1 Ch. 55 ; 81 L. J. Ch. 73.

Shares.

(*r*) Power to invest on stock does not authorise an investment in shares : *Re Willis* [1911], 2 Ch. 563 ; 81 L. J. Ch. 8. And see notes to investment clauses in Wills, *infra*.

Power to invest in a public company.

(*s*) The expression "public company" in an investment clause includes a company registered under the Companies (Consolidation) Act, 1908 : *Re Sharp* [1890], 45 Ch. D. 286 ; 60 L. J. Ch. 38 ; and as a rule, means a company registered in the United Kingdom : *Re Castlehow* [1903], 1 Ch. 352 ; 72 L. J.

private, incorporated in the United Kingdom or any British Dominion, Colony, State or Dependency under the Companies Acts or under any special Act of the Imperial Parliament, or of any general or special Act of the Legislature of any British Dominion, Colony, State or Dependency, or by Royal Charter, and whether trading or otherwise carrying on business in Great Britain, India or any British Dominion, Colony, State or Dependency [or elsewhere] which shall have paid dividends [at the rate of at least £—— per cent. per annum] on its ordinary stock or shares for at least three years prior to the date of investment; or

(v) On the security (*t*) of any life or contingent interest in any real or personal property, together with an assurance on the life or other event; (*u*) [or

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Ch. 211; see also *Re White* [1913], 1 Ch. 231; 82 L. J. Ch. 149; and where power is given to invest in "the stocks, &c., of any corporation or company, municipal, commercial or otherwise," the power applies both to companies formed or registered in the United Kingdom, but carrying on business abroad, and to companies formed or registered abroad: *Re Stanley* [1906], 1 Ch. 131; 75 L. J. Ch. 56. A limited company registered and having its head office in England is "a company in the United Kingdom" though its property is situated and its operations are carried on abroad: *Re Hilton* [1909], 2 Ch. 548; 79 L. J. Ch. 7. A company incorporated by Act of Parliament means a company incorporated by special Act: *Re Smith* [1896], 2 Ch. 590; 65 L. J. Ch. 761; or by royal charter: *Elve* v. *Boyton* [1891], 1 Ch. 501; 60 L. J. Ch. 383. See also 26 L. Q. R. 259, as to what is a company.

Personal security.

(*t*) Trustees with power to lend on personal security, with the consent of a tenant for life, may lend to him, if satisfied that there is a reasonable prospect of repayment: *Re Laing's Settlement* [1899], 1 Ch. 593; 68 L. J. Ch. 230; but, apart from express powers, loans on personal security are breaches of trust: *Pocock* v. *Reddington* (1801), 5 Ves. 794; *Wilkes* v. *Steward* (1801), G. Coop. 6.

Power to vary.

(*u*) The power to vary investments is contained in Forms Nos. 25–28; see also T. Act, 1925, s. 1 (1).

The following Forms may be substituted for sub-clause (1) if desired, or that sub-clause may be cut down:—

Moderate range.

MONEY liable to be invested hereunder may be invested in any investments from time to time authorised by law as investments for trust money, or on mortgage of leasehold properties in England or Wales, held for a term having at least sixty years to run at the time of the investment (with power for the Trustees to dispense with the investigation of the Lessor's title, and to effect and maintain sinking fund policies), or on mortgage of a life interest in real or personal property, together with a policy of assurance on the life on which such interest shall be held; *or*

Trustee investments only.

MONEY liable to be invested hereunder may be invested in

[Power to purchase land.]

(vi) In the purchase and paying the cost of the purchase of any buildings, lands, perpetual rentcharges and other real estate or chattels real in or arising in England, Wales [or Northern Ireland], being either freehold (subject or not to manorial incidents or to a compensation rentcharge) or leasehold for any term of years, whereof not less than sixty years is unexpired at the time of purchase (with power to effect and maintain sinking fund policies), or in making improvements on the property so purchased, and the same shall be conveyed to the Trustees on trust for sale with power to postpone the sale, and any powers (in addition to the statutory powers) hereby conferred in relation to land and the power to appoint new Trustees hereinafter contained shall be inserted in any such conveyance (*v*)]:

Allotment letters, mortgage debts, &c.

(2) ANY securities accepted or acquired under sub-sections (3) and (4) of section ten of the Trustee Act, 1925, may be treated (*w*) as authorised investments. And the Trustees may exercise the powers conferred by section fifteen of that Act at their absolute discretion and in particular may release any part of a security on being satisfied that the security remaining or to be provided will be sufficient to secure any mortgage debt subject to the trust and may agree to vary the rate of interest payable in respect of any such debt.(*x*)

Bonuses to be income.

(3) ALL bonuses and other periodical payments in the nature of income accruing from or payable in respect of any of the trust

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any investments from time to time authorised by law for investment of trust money.

And see T. Act, 1925, ss. 1 to 11.

Where a schedule is employed the clause will run:—

Scheduled investment clause.

MONEY liable to be invested under the trusts hereof may be invested in the manner appearing in the schedule hereto and the powers mentioned in that schedule may be exercised by the Trustees.

Rents and profits.

Power to purchase land.

(*v*) The trusts of the net rents and profits are governed by L. P. Act, 1925, s. 32 (1). Any land acquired with the proceeds of sale of other land formerly held on trust for sale may be laid out in the purchase of land: *ib.*, s. 28. As to the power for the court to control the trustees' discretion, see *Re D'Epinoix* [1914], 1 Ch. 890; 83 L. J. Ch. 656.

(*w*) Apart from T. Act, 1925, s. 10 (4) proviso, so much of the proceeds as represented a bonus paid in shares belonged to the tenant for life and the balance was capital: *Re Northage* (1891), 60 L. J. Ch. 488; *Re Hume Nisbet* (1911), 55 Sol. J. 536; and see Theobald, 7th ed., 553; 2 Wolst. & Cherry, 11th ed.

Bankers and agents.

(*x*) Power to deposit at a bank and to pay calls is given by T. Act, 1925, s. 11. Full power to employ and pay agents, including bankers and attorneys, abroad in regard to property outside the United Kingdom, is given by *ib.*, s. 23.

premises shall, for the purposes hereof, be deemed annual income, and be applicable accordingly :(y)

Power to make contributory loans.

(4) THE Trustees may [with such consent or at such discretion as aforesaid] lend money on any security hereinbefore authorised in conjunction with money lent by any other persons by way of contributory loan, and may accept the security in the names of the Trustees or in the name of one of them, together with other names or another name [or may permit the same to be taken exclusively in the names of other persons, as may be deemed expedient(z)] :

No. 52.

As to land conveyed on

(1) WITH regard to the property by the recited Conveyance of even date herewith conveyed on trust for sale and for the time

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Nature of bonus.

(y) As to the cases in which, as between tenant for life and remainderman in the absence of such a provision as in the text, a bonus is income or capital, see *Bouch* v. *Sproule* (1887), 12 A. C. 385 ; 56 L. J. Ch. 1037 ; *Re Alsbury* (1890), 45 Ch. D. 237 ; 60 L. J. Ch. 29 ; *Re Armitage* [1893], 3 Ch. 337 ; 63 L. J. Ch. 110 ; *Re Malam* [1894], 3 Ch. 578 ; 63 L. J. Ch. 797 ; *Re Taylor* [1905], 1 Ch. 734 ; 74 L. J. Ch. 419 ; *Re Piercy* [1907], 1 Ch. 289 ; 76 L. J. Ch. 116 ; see also *Re Palmer* (1912), 56 Sol. J. 363 ; *Re Evans* [1913], 1 Ch. 23 ; 82 L. J. Ch. 12 ; *Re Sale* [1913], 2 Ch. 697 ; 83 L. J. Ch. 180 ; *Re Thomas* [1916], 2 Ch. 331 ; 85 L. J. Ch. 519 ; *Re Hutton* [1917], 1 Ch. 357 ; 86 L. J. Ch. 375 ; *Re Ogilvie*, 88 L. J. Ch. 159 ; *Re Oppenheim* [1917], 1 Ch. 274 ; 86 L. J. Ch. 193.

Contributory loans by trustees.

(z) A contributory loan is a breach of trust unless authorised expressly : *Webb* v. *Jonas* (1888), 39 Ch. D. 660 ; 57 L. J. Ch. 671 ; *Re Dive* [1909], 1 Ch. 328 ; 78 L. J. Ch. 248 ; and see *Stokes* v. *Prance* [1898], 1 Ch. 212 ; 67 L. J. Ch. 69.

Loans for terms certain.

Trustees are now authorised to lend money for a term of seven years certain, provided the requirements of T. Act, 1925, s. 10 (1), are complied with, thus meeting the decision in *Vickery* v. *Evans* (1863), 33 Beav. 376 ; 33 L. J. Ch. 261.

Duty of trustees as to custody of bonds to bearer and title deeds.

Where trustees are, under T. Act, 1925, s. 7, or otherwise, authorised to retain bonds to bearer, they may deposit them with bankers for the purpose of collecting dividends, confirming : *Re De Pothonier* [1900], 2 Ch. 529 ; 69 L. J. Ch. 773 ; but not with solicitors : *Field* v. *F.* [1894], 1 Ch. 425 ; 63 L. J. Ch. 233. A direction that investments are to be retained or made "in the name" of a trustee does not prevent bearer securities from being purchased and retained : T. Act, 1925, s. 7 (1), meeting the decision in *Re Roth* (1896), W. N. 16 ; but it is more correct to say in the name or "under the control" of the trustee.

Title deeds.

Title deeds, where frequently required for reference, *e.g.*, in the development of a building estate, may be left in the custody of solicitors acting in the trust : *Field* v. *F.*, *supra*. Where there is a tenant for life having the powers under the S. L. Act, he is entitled to the custody of the deeds relating to the legal estate in the settled land : S. L. Act, 1925, s. 98 (3). In the absence of special circumstances a trustee is not entitled to have title deeds and non-negotiable securities removed from the custody of a co-trustee and placed at a bank in a box accessible only to the trustees jointly : *Re Sisson* [1903], 1 Ch. 262 ; 72 L. J. Ch. 212. But the trustees may require the trust documents to be placed at a bank, &c., for safe custody, and may pay any charges therefor out of income : T. Act, 1925, s. 21.

trust for sale by deed of even date. Application of rents until sale.

being remaining unsold, the Trustees shall hold or apply the net rents and profits thereof (after payment of all rents, rates, taxes, payments for insurance, repairs and other outgoings, and all expenses incurred in the exercise of the powers conferred on the Trustees by statute, or by the said Conveyance, and in their opinion properly payable out of income), upon and subject to the same trusts and powers as are hereinbefore declared concerning the annual income of the [Husband's *or* the Wife's] Trust Fund:

Power to raise money required on exercising powers in conveyance of even date.

(2) THE Trustees may raise (*a*) and pay out of the capital or income of the Trust Fund[s hereby settled or either of them] any money required to be paid on the exercise of the powers conferred by statute or by the said Conveyance, and in their opinion properly payable out of capital or income [but so that the said property and the proceeds of the sale thereof and the investments representing the same and any trust fund or property held upon corresponding trusts and the rents and profits and annual income thereof respectively shall be primarily charged with the repayment to any trust fund not held upon corresponding trusts and to the annual income thereof of all money raised as aforesaid out of such last-mentioned trust fund or income].

No. 53.

Power to purchase land in the U. K. or the colonies to be held on trust for sale.(*b*)

(1) THE Trustees may [during the lives of the Husband and Wife and the life of the survivor of them, with their, his or her consent in writing], instead of laying out all or any money held on the trusts hereof in the other investments hereinbefore authorised, invest the same money in the purchase and paying the cost of the purchase of any buildings, lands, perpetual rent-charges or other real estate or chattels real in or arising in the United Kingdom or in any British Dominion, Colony, State or Dependency

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Statutory powers of trustees for sale.

(*a*) See *Re Bellinger* [1898], 2 Ch. 534; 67 L. J. Ch. 580. The trustees for sale have all the statutory powers of a tenant for life: L. P. Act, 1925, s. 28; hence in many cases no additional powers will be given by the conveyance of even date.

Capital money for S. L. Act purposes.

(*b*) Under the old law this Form made the trust fund liable to be laid out in the purchase of land within the meaning of S. L. Act, 1882, s. 33; *Re Soltau* [1898], 2 Ch. 629; 68 L. J. Ch. 39; *Re Thomas* [1900], 1 Ch. 319, 323; 69 L. J. Ch. 198; now under L. P. Act, 1925, s. 28 (1), trustees for sale, in relation to proceeds of sale, have all the powers of a tenant for life and trustees of a settlement under the S. L. Act, 1925, while under s. 77 of that Act (taking the place of s. 33 of the Act of 1882) money liable to be laid out in the purchase of land can be applied generally as "capital money" under that Act. Where the power omits the direction as to the property being conveyed on trust for sale, &c., and the trust of the rents and profits, the L. P. Act, 1925, s. 32, now supplies the omission. For a short form, which will be used where only (but not including the Irish Free State), being either freehold (subject or not to any manorial incidents), or leasehold for any term of years whereof not less than sixty years is unexpired at the time of purchase (with power to effect and maintain sinking fund policies), or in making improvements on the property so purchased, and the same shall be conveyed or assigned to and vested in the Trustees UPON TRUST [with the consent in writing of the Husband and Wife, or the survivor of them, and after the death of both], at the discretion of the Trustees, to sell the same properties, with full power to postpone any sale; and as regards any property not within England or Wales all the statutory powers and provisions applicable to land in England held on trust for sale shall apply thereto in like manner as if those powers and provisions had been expressly incorporated in this deed:

Trusts of proceeds of sale and other capital.

(2) THE Trustees shall stand possessed of the net money to arise from any such sale (after payment of the costs incidental thereto), and any other capital money arising under the said powers Upon the trusts and subject to the powers and provisions (including this present power of purchasing land) upon and subject to which the money laid out under this present power would then have been held if the same had not been so laid out, and in the meantime until sale the purchased properties are to be considered as money:(c)

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land in England or Wales is to be purchased, see the last para. of Form No. 51 (1), p. 154. Trustees when purchasing leaseholds are not liable to investigate the lessor's title: L. P. Act, 1925, ss. 44, 182; nor when lending on the security of leaseholds: T. Act, 1925, s. 8 (2). A trustee, whether purchasing or lending money, may accept a shorter title than a title which a purchaser, in the absence of a special contract, is entitled to require, but the title must be such as a person acting with prudence would have accepted: T. Act, 1925, s. 8 (3). Where trustees purchase a timber estate under a power to purchase land the tenant for life is entitled to money arising from sales of timber after deducting costs of replanting, &c.; *Re Trevor-Batye* [1912], 2 Ch. 339; 81 L. J. Ch. 646.

Investigation of lessor's title.

Marketable title.

Timber estate.

Sinking fund policy and short leaseholds.

(c) If desired add: PROVIDED that if a sinking fund policy is taken out in the names and to the satisfaction of the Trustees leasehold property having less than sixty years to run may be purchased under the foregoing power, and all premiums and other money required for taking out and keeping up such sinking fund policy shall be paid out of the income of the trust premises, and on a sale of such property the policy shall be included in the sale, and all money received in respect of any such policy shall be treated as capital.

Power to permit beneficiaries to occupy.

(3) UNTIL such sale as aforesaid the Trustees may permit the Husband and Wife or the survivor of them or their issue, or any other person beneficially interested in possession, to reside in or occupy any messuage or property so purchased upon such terms (if any) as the Trustees in their absolute discretion may think fit :

Powers in conveyance.

(4) ANY such conveyance on trust for sale shall contain [powers corresponding to the additional powers relating to land hereinafter contained and] a power corresponding to the power to appoint new trustees hereinafter conferred.

No. 54.

Power (obligatory on request) to invest in the purchase of a residence.(d)

(1) AT any time during the joint lives, and upon the joint request in writing of the Husband and Wife, the Trustees shall and they are hereby required to raise out of the [Husband's Trust Fund or the Wife's] Trust Fund [or partly out of each] any sum not exceeding £—— and invest the sum so raised in the purchase and in paying the expenses of the purchase of and of making improvements in or on a dwelling-house in England or Wales with or without a garden or other land, or any usual appurtenances, as a residence for the Husband and Wife, which messuage and land may be either freehold (subject or not to manorial incidents) or leasehold for any term of years whereof not less than sixty years is unexpired at the time of purchase, and the property so purchased shall be conveyed or assigned to and vested in the Trustees UPON TRUST, at the request in writing of the Husband and Wife or the survivor of them, and after the death of both at the discretion of the Trustees, to sell the same with full power to postpone any sale:

(2), (3) and (4) (*As in last Form*).

No. 55.

Power to purchase advowson.

(1) THE Trustees may at any time during the life of the Husband, upon his request in writing and with the consent of the Wife, if living, raise by the sale of a sufficient part of the [Husband's] Trust Fund any sum not exceeding £—— and apply the same in the purchase of an advowson or perpetual right of presentation to any ecclesiastical benefice in England to be conveyed to the Trustees UPON TRUST, with the consent in writing of the Husband and Wife or the survivor of them, and after the death of the survivor of them at the discretion of the Trustees, to sell (but subject to any statutory restriction) the said advowson :

(2) THE Trustees shall stand possessed, &c. (*continue as in clause* (2) *of Form No.* 53, *p.* 157, *saying* " advowson " *for* " land " *or* " property ") :

(*d*) See notes to last Form.

(3) IN the meantime and until such sale the Trustees shall stand possessed of the advowson UPON TRUST for the Husband during his life, and after his death IN TRUST for the persons who, if the advowson had been sold, would for the time being be entitled hereunder to the income of the fund representing the proceeds thereof, and so that during the minority of any person who, if of full age, would for the time being be entitled to nominate to the benefice under the trusts aforesaid, the Trustees shall have the like right to nominate as the infant would have had if he or she had been of full age, and so far as necessary in the name and on behalf of the infant.(e)

No. 56.

Additional powers applicable to land held on trust for sale.

(1) THE Trustees shall, with the consent in writing of the Husband and Wife or the survivor of them, and after the death of both at the discretion of the Trustees, have and may exercise, in reference to any buildings, lands or other real estate and chattels real which [or the proceeds of sale of which] are from time to time held on the trusts hereof, the following powers, in addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, namely—

Further assurances.

(i) Power to exercise the powers conferred by section sixty-six of the Law of Property Act, 1925, without the leave of the Court;

Renewal of leases.

(ii) Power to obtain the renewal of any leases which by law are capable of being renewed and to apply capital for that purpose;

Transactions generally.

(iii) Power to carry out any of the transactions referred to in section sixty-four of the Settled Land Act, 1925, and any other transaction which under that Act is to be carried out only with the leave of the Court at the discretion of the Trustees and without any such leave;

Waste.

(iv) Power to act in the trust in all respects as if the Trustees and the persons beneficially interested had been made unimpeachable for waste;

[Improvements.](ee)

[(v) Power to authorise any improvement to be made out of capital which in the opinion of the Trustees will be for the permanent benefit of the trust;]

Restrictions on sale of advowsons.

(e) For the restrictions on the sale of advowsons, see The Benefices Act, 1898, (Amendment) Measure, 1923, prohibiting the sale of a right of patronage of a benefice after two vacancies have occurred in such benefice after the 14th July, 1924. Under the same Measure an owner of an advowson may by deed declare the advowson to be inalienable.

(ee) See note (g) next page.

Raising of money.

(vi) Power to raise money by way of mortgage for any purpose for which, if capital money were in the hands of the Trustees, the same could be properly applied and so that no mortgagee shall be concerned to see for what purpose any money is raised or as to the application thereof.(*f*)

[Mining rents.

[(2) ALL mining rents and royalties shall go and be applied as income and no part thereof shall be set aside as capital.(*g*)

Rents and profits generally.]

(3) THE application of all net rents and profits of real estate and chattels real, whereof the trusts of the proceeds of sale are hereby declared, shall be governed by section thirty-two of the Law of Property Act, 1925.(*g*)]

Delegation of powers to beneficiaries.

(4) THE powers of delegation conferred by section twenty-nine of the Law of Property Act, 1925, shall, for the purposes hereof and until sale of the land, apply to all the statutory powers relating to land as hereby extended,(*h*) provided that—

(i) All capital money shall be paid to the Trustees;

(ii) The power of attorney shall not authorise the donee to complete any sale or other transaction in respect of which capital money arises or to give any receipt for capital money;

(iii) Until the power of attorney is revoked transactions may be carried out thereunder in the names or name of the Trustees or Trustee for the time being hereof;

(iv) The production of an office copy of the power of attorney by the donee shall, unless the contrary appears, be sufficient evidence that the power has not been revoked.

No. 57.

Power for Trustees to accept conveyance of land held upon trust for sale.(*i*)

WITH regard to any money which may be payable to the Trustees under any assignment or other provision herein contained in respect of the proceeds of sale or a share in the proceeds of sale to arise from any land held upon trust for sale, the Trustees may, at their discretion and without being liable to account, accept a conveyance of any such land at a valuation in or towards satisfaction of the money or share payable to the Trustees as aforesaid, but any land so accepted shall be

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Additional powers.

Restrictions on renewal.

(*f*) See also as to additional powers, Settlements Realty (Forms), *infra*. Such of the above powers will be selected as may be required according to the circumstances of each case. As to the restrictions on renewal of leases: L. P. Act, 1922, 15th Sch., paras. 5 to 8. The trustees can grant a lease by way of renewal: S. L. Act, 1925, s. 43.

(*g*) These two sub-clauses and the other words in square brackets will only be used in the Personalty Settlement as relating to beneficial interests; they are not required in any separate conveyance on trust for sale.

Delegation.

(*h*) Where dealings are likely to be frequent this power will be required, otherwise it would be difficult to obtain trustees who would be willing to act.

(*i*) This Form is expedient where a reversionary interest in land held on conveyed to the Trustees on trust for sale in like manner and so as to be subject to the same powers and provisions as if the same had been acquired under the power to purchase land hereinbefore contained.(*j*)

No. 58

Extension of statutory power to partition.

(1) The Trustees may at their discretion exercise the power to partition conferred by section twenty-eight of the Law of Property Act, 1925—

(i) Whether or not the net proceeds of sale have become absolutely vested in persons of full age in undivided shares;

(ii) Without obtaining any of the consents made requisite by that section.

Equality money.

(2) Any money required to be paid for equality of partition may be raised out of the capital of the Trust Funds and hereby settled on either of them, and all adjustments requisite for maintaining the respective values of those funds shall thereafter be made by repayments from one fund to the other.(*k*)

No. 59.

Power to lend part of Trust Funds to Husband on the security of his bond or covenant and a policy of assurance on his life.

(1) The Trustees may at their discretion at any time during the lifetime of the Husband, at his request in writing and with the consent in writing of the Wife, if living, raise out of the [Husband's or Wife's] Trust Fund[s] and lend to the Husband any sum or sums not exceeding together £——, upon his securing the repayment thereof with interest by his bond or covenant, and by a policy of assurance on his life for a sum equal to the amount so lent, which policy shall be either effected in the names of the Trustees or assigned to them by way of mortgage, with such proper and usual covenants on the part of the Husband for keeping on foot such policy, and otherwise in relation thereto, as the Trustees shall require:

(2) If the Husband shall neglect or fail to keep on foot the said policy, the Trustees may apply a sufficient part of the

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trust for sale is assigned, unless clause (4) of Form No. 23, p. 124, is used instead.

Statutory power to partition.

It can no longer be said to be essential, for if the head trustees for sale make a partition under L. P. Act, 1925, s. 28 (3), (4), this would be binding on the trustees of the share. See also T. Act, 1925, ss. 15 and 24.

Power to accept property.

As regards reversionary interests falling into possession, trustees have power to agree the value thereof, to accept authorised investments in or towards satisfaction thereof, and to allow deductions for duties, costs, &c.: *ib.*, s. 22 (1).

(*j*) See last paragraph of Form No. 51 (1), also Form No. 53; also L. P. Act, 1925, s. 28 (3); T. Act, 1925, s. 22.

(*k*) Clause (2) of this Form relates to beneficial interests and will not be inserted in a conveyance on trust for sale.

income of the [said] Trust Fund[s] in or towards the payment of any money which may be required for keeping on foot such policy, or (in case the same shall become void) for effecting and keeping on foot any new policy in lieu thereof:

Indemnity to trustees.

(3) PROVIDED that it shall not be obligatory on the Trustees to take any proceedings in respect of any such bond, covenant or mortgage or to apply any part of the income of the [said] Trust Fund[s] in or towards keeping on foot or effecting any such policy as aforesaid, unless the Trustees shall in their absolute discretion (without being liable to account) think fit, and the Trustees shall not be liable for any loss arising by reason of any omission by the Husband to comply with or perform any such bond or covenant as aforesaid, or by reason of any such policy becoming void:

Money lent to Husband not to be called in so long as he keeps up policy.

(4) PROVIDED ALSO, that the Trustees shall not require the Husband to repay any money lent to him under this present power so long as he shall duly keep on foot the policy of assurance, and the Husband may at any time repay the same or any part thereof by instalments of not less than £——.

No. 60.

Power to pay Wife's income to bankers.(l)

NOTWITHSTANDING [any disability of or] the restraint on anticipation of income hereby imposed on the Wife, the Trustees may pay or direct payment of such income to any banker or agent whom she may, by writing signed by her, appoint to receive the same on her behalf, and whether to the credit of the Husband or otherwise, but so that such appointment shall always be revocable by any other writing signed by her and delivered to the Trustees.

No. 60 A.

Provision as to income of Husband where there is a discretionary trust.

NOTWITHSTANDING the discretionary trusts hereinbefore imposed, the Trustees may direct that (subject to further order) any income subject to such trusts shall be paid to the current account of the Husband or to any joint account of his and of the Wife as the Trustees may think fit.

No. 61.

Power for Trustees to adjust funds and to appropriate, &c.

(1) THE Trustees may apportion any money which may have been advanced under the power of advancement applicable to this settlement, so that if the aforesaid ultimate trust in default of children takes effect, then, subject to any direction to the contrary, money so advanced may be apportioned rateably

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Receipts by infant.

(l) This Form is not strictly necessary: *Hood-Barrs* v. *Heriot* [1896], A. C., at p. 184; 65 L. J. Q. B. 352; but it may be convenient to add it where the wife is an infant, or the husband is domiciled abroad. A married infant has power to give receipts for income and accumulations: L. P. Act, 1925, s. 21.

between the Husband's Trust Fund and the Wife's Trust Fund so far as circumstances permit :(*m*)

(2) IN the execution of any of the trusts or powers hereof the Trustees—

(i) May (without prejudice to any jurisdiction of the court) decide what money represents income and what represents capital ;

(ii) May, in reference to any property or the proceeds of any property from time to time subject to the trusts hereof, or any share therein, and as between the persons interested, exercise the powers of appropriation and other incidental powers conferred on personal representatives by section forty-one of the Administration of Estates Act, 1925, without any of the consents made requisite by that section ; and every decision, allotment, apportionment, setting apart and valuation made in exercise of the said powers shall be as binding upon all persons then or thereafter to be beneficially interested in the premises as if the same had been duly made by a court of competent jurisdiction :(*n*)

As to licensed property.

(3) THE Trustees may at their discretion either surrender any licence connected with any hotel, public-house or other licensed property from time to time subject to the trusts hereof which by reason of the duties imposed thereon they may consider it undesirable to retain, or may pay all duties required for renewing or keeping on foot any such licence, notwithstanding that the amount of the duties may be in excess of the enhanced value of the property attributable to the existence of the licence, with a view to the ultimate reduction of such duties or otherwise, and may take or defend any proceedings in connexion with any licensed property or the licences or duties connected with the same.(*o*)

No. 62.

Indemnity to trustees.(*p*)

IN the professed execution of the trusts and powers hereof no trustee shall be liable for any loss to the trust premises arising

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(*m*) Clause (1) of this Form is only required where two funds are settled. Where there were two funds and no power to apportion, see *Stoddart* v. *Savile* (1893), 38 Sol. J. 79 ; also *Provost of Edinburgh* v. *Lord Advocate* (1879), 4 A. C. 823.

Blended funds ; valuation.

Independently of this express power, a power to sever and apportion blended funds is given by T. Act, 1925, s. 15 ; a power to value is given : *ib.*, s. 22 (3).

(*n*) See *Re Ruddock* (1910), 102 L. T. 89 ; *Re Raven* [1915], 1 Ch. 673.

(*o*) This sub-clause should only be used where licensed property is vested in or is likely to be acquired by the trustees.

(*p*) This clause is for use in special cases : *Wyman* v. *Paterson* [1900], A. C. 271 ; 69 L. J. P. C. 32 ; *Re Sheppard* [1911], 1 Ch. 50 ; 80 L. J. Ch. 52. In some cases, *e.g.*, where the investment clause is wide, trustees refuse to by reason of any improper investment made in good faith, or for the negligence or fraud of any agent employed by him, or by any other trustee hereof, although the employment of such agent was not strictly necessary or expedient, or by reason of any mistake or omission made in good faith by any trustee hereof, or by reason of any other matter or thing except wilful and individual fraud or wrong-doing on the part of the trustee who is sought to be made liable.

No. 63.

Power to allow existing investments held on trusts of another Settlement, &c., to remain.

THE Trustees may permit the trustees or trustee for the time being of the recited Settlement of 19— [*or* Will] to retain any investments mentioned in the —— Schedule hereto, and now held on the trusts of that Settlement [*or* Will], notwithstanding that the same may not be investments authorised by the terms of that Settlement [*or* Will], and the Trustees shall not be bound to take any proceedings as to any such investments which are not so authorised, or as to any other investments, or as to any breach of trust committed or to be committed by the trustees or trustee of that Settlement [*or* Will], nor be liable in any way for any loss which may occur through retainer of investments, proper or otherwise, held on the trusts of that Settlement [*or* Will], or through any act, deed or omission on the part of the trustees or trustee thereof.(*pp*)

No. 64.

Costs of settlement out of Wife's trust fund.

ALL costs, charges and expenses properly incurred of or incidental to the preparation and execution of this Settlement [and the recited Conveyance of even date herewith and of or incidental to obtaining the hereinbefore recited Order of the High Court] shall be raised and paid by the Trustees out of the Wife's Trust Fund, and a memorandum in writing endorsed hereon and signed by the Trustees, and the Husband and Wife or the survivor of them certifying the amount of such costs, charges and expenses shall be conclusive as to such amount and binding on all persons interested hereunder.(*q*)

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act unless expressly indemnified, not being content to rely upon the indemnity afforded by T. Act, 1925, s. 30; see also, for further indemnities to S. L. Act trustees: S. L. Act, 1925, ss. 96 to 100.

(*pp*) See also T. Act, 1925, ss. 15 and 22 (1) and (2).

Costs of settlement by wife.

(*q*) Formerly a husband paid for the settlement of his wife's property because he was liable for her debts. Now it would seem that he is only liable to the extent of the property (if any) he takes from her, and if all is settled he is not liable; but see *Re Lawrance* [1894], 1 Ch., at pp. 558–9; 63 L. J. Ch. 205. In *De Stacpoole* v. *De S.* (1887), 37 Ch. D. 139; 57 L. J. Ch. 463, the Court ordered that the costs of all parties (including the husband) of a settlement, which had been made by a female ward under the Infant

No. 65.

Extension of power to delegate trusts during absence abroad.

ANY trustee may by deed exercise the powers conferred by section twenty-five of the Trustee Act, 1925 (as amended), free from the restrictions and provisions of sub-sections (2) to (5) inclusive of that section, and any power of attorney so granted may be made irrevocable for a period not exceeding one year, and the trustee giving the power of attorney shall not be answerable for the acts or defaults of the attorneys.(r)

No. 66.

Power for professional trustees to charge costs. (s)

ANY trustee being a solicitor or other person engaged in any profession or business (t) shall be entitled to be paid all usual professional or proper charges for business transacted, time expended and acts done by him or any partner of his in connexion with the trusts hereof, including acts which a trustee not being in any profession or business could have done personally.(u)

No. 67.

Examination of trust accounts (v)

THE Trustees, in exercising the powers conferred by sub-section (4) of section twenty-two of the Trustee Act, 1925, shall not (save in special circumstances) require an audit to be made, but shall be satisfied with an examination of the accounts, and the report of the accountant shall (subject to any requirements of the accountant being complied with) operate to protect the Trustees.

Settlements Act, 1855, and which contained no provision as to costs, should be paid out of funds in court which were subject to the settlement.

(r) Sub-section (4) is amended by inserting after " execution thereof " the words " or where not executed within the United Kingdom within ten days after its receipt in the United Kingdom " : L. P. (Amend.) Act, 1926, Sch.

Powers to employ agents.

(s) The usual power to employ agents is given by T. Act, 1925, s. 23 (2); further powers applicable to property outside the United Kingdom are given by sub-s. (3). The onus is on the person taking proceedings against the trustees to show that loss by the act of an agent was attributable to their default: *Re Brier* (1882), 26 Ch. D. 238; *Shepherd* v. *Harris* [1905], 2 Ch. 310; 74 L. J. Ch. 574.

(t) See *Re Wertheimer* (1912), 106 L. T. 590.

Professional costs.

Remuneration of trustees.

Professional trustees.

(u) For the necessity of these words, see *Re Chalinder and Herington* [1907], 1 Ch. 58; 76 L. J. Ch. 71. The trustees cannot settle the amount of the costs: *Re Fish* [1893], 2 Ch. 413; 62 L. J. Ch. 977; and see *Re Webb* [1894], 1 Ch. 73; 63 L. J. Ch. 145. The liability of trustees, other than professional trustees, whether a person or a corporation, is not increased by the receipt of remuneration: *Jobson* v. *Palmer* [1893], 1 Ch. 71; 62 L. J. Ch. 180; *Shepherd* v. *Harris* [1905], 2 Ch. 310, at p. 318; 74 L. J. Ch. 574; but as to professional trustees, see *National Trustees of Australia* v. *General Finance of Australia* [1905], A. C., at p. 380; 74 L. J. P. C. 81, and article in 50 Sol. J. 72. The court has power, when appointing a corporation to be a trustee, to authorise remuneration to be charged: T. Act, 1925, s. 42.

Examination or audit.

(v) An " examination " of accounts is an informal matter as compared with an audit, and for most purposes is amply sufficient. As to other audits, see Public Trustee Act, 1906, s. 13. In the last edition, Vol. II, pp. 411–12, a full power was given in relation to the audit of accounts, but in view of T. Act, 1925, s. 22, this will seldom, if ever, be required.

SECTION VI.

POWER TO APPOINT NEW TRUSTEES AND MISCELLANEOUS CLAUSES.

No. 68.

Power to appoint new trustees.

THE Husband and Wife during their joint lives, and the survivor of them during his or her life, shall have power from time to time to appoint a new trustee or new trustees hereof.(*w*)

(*If the Husband is a foreigner or domiciled abroad add :—* " but no person who is not resident in the United Kingdom shall be appointed to be a trustee hereof.")

No. 69.

Provision where a trust corporation is appointed.(*x*)

(1) A trust corporation (not being the Public Trustee) acting as a trustee hereof, shall be entitled to charge remuneration not exceeding that which the Public Trustee would be entitled to charge :

PROVIDED that if the trust corporation does not render the same services as would have been rendered by the Public Trustee the remuneration shall be reduced by such amounts as may be agreed at the time that the trust is accepted between the trust corporation on the one hand and the settlors or the persons having power to appoint new trustees (as the case may be) on the other hand.

(2) IF at any time during the subsistence of the trusts hereof the Public Trustee shall act in conjunction with

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Separate deeds of appointment of new trustees.

(*w*) Where the settlement consists of a personalty settlement declaring the trusts of the proceeds of sale of land, and one or more conveyances of land on trust for sale, an appointment of new trustees of the personalty settlement must be effected by a separate deed from that whereby new trustees are appointed of the conveyance: T. Act, 1925, s. 35. Where there are two or more conveyances on trust for sale new trustees may, unless inconvenient, be appointed of the conveyances by the same appointment. The same persons who are trustees of the personalty settlement must be appointed as the trustees of the conveyances on trust for sale: L. P. Act, 1925, s. 24.

Appointment of corporation as co-trustee with individuals.

(*x*) A corporation can be appointed a trustee to hold trust property jointly with an individual: *Re Thompson* [1905], 1 Ch. 229; 74 L. J. Ch. 133, a case under the Bodies Corporate (Joint Tenancy) Act, 1899. As a rule it is better that a trust corporation should act alone: L. P. Act, 1925, s. 27 (2) as amended; it is conceived that the court would, as in *Re Leslie* [1911], 1 Ch. 611, appoint a trust corporation to act alone, though the trust instrument provides that there shall not be less than a certain number of trustees. For the meaning of "trust corporation": L. P. Act, 1925, s. 205 (1) (xxviii); L. P. (Amend.) Act, 1926, s. 3.

any persons as trustees hereof the following provisions shall have effect (*y*)—

(i) All documents and securities relating to the trust shall be retained in the sole custody of the Public Trustee ;(*z*)

(ii) The persons for the time being acting as trustees hereof in conjunction with the Public Trustee shall be liable only in respect of their respective wilful and individual fraud or wrongdoing, and shall not be liable for any loss to the trust premises arising by reason of any act or default on the part of the Public Trustee, PROVIDED that the trust premises or the part thereof in respect of which the loss occurs, shall at the time of the loss be under the exclusive control and management of the Public Trustee.

No. 70.

Where Public Trustee appointed—nomination of solicitors to the trust, &c.

FOR the purposes of sub-section (2) of section eleven of the Public Trustee Act, 1906, Messrs. —— shall be deemed to be the firm of solicitors who are selected by the creators of the trust and by the beneficiaries to be employed by the Public Trustee in connexion with the trusts hereof.

No. 71.

Power for Wife to revoke with consent of Trustees.

THE Wife (*or other Settlor*) may from time to time by deed, revocable or irrevocable, with the consent in writing of the trustees for the time being hereof, not being less than two in number, which consent such trustees may withhold or give at their discretion without being in any way liable for the exercise of such discretion, revoke all or any of the trusts hereinbefore declared concerning all or any part or parts [not exceeding together one-half] of the [Wife's] Trust Fund, and may direct that the parts of the Trust Fund to which such revocation extends shall be held IN TRUST for herself absolutely or otherwise as she may think proper.(*a*)

(*y*) These provisions were suggested by Mr. H. E. Borrow in 54 Sol. J. 267, having regard to the fact that the Government guarantee does not apparently extend to co-trustees of the Public Trustee.

(*z*) Where the Public Trustee appoints an auditor the acting trustee must produce all necessary documents for the audit: *Re Williams* (1910), 26 T. L. R. 604 ; and see T. Act, 1925, s. 22 (4).

Power of revocation.

(*a*) This is not a usual provision in a marriage settlement. It should, however, be inserted in voluntary settlements, unless the object is to evade the payment of death duties, and may be essential where a person who has become entitled to property on attaining full age is persuaded to settle it by a relation: *Powell* v. *P.* [1900], 1 Ch. 243 ; 69 L. J. Ch. 164 ; approved in *Wright* v. *Carter* [1903], 1 Ch. 27 ; 72 L. J. Ch. 138.

Settlements on behalf of lunatics.

Where a settlement is made under L. P. Act, 1925, s. 171, provision must be made, either by a power of appointment or by a power of revocation for the possibility of the lunatic or defective recovering full capacity.

No. 72.

Provision where husband is domiciled abroad.(*b*)

(1) NOTWITHSTANDING that the Husband may not be a British subject or may be domiciled abroad this deed shall be construed and have effect and the trust shall be administered in all respects as if the Husband were domiciled in England, and the laws of England statutory or otherwise shall apply accordingly :

(2) As regards any interest in property hereby conferred on the Wife she shall be entitled to the same for her separate use and as regards any property, real or personal, or any interest therein belonging to the Wife, or to which she may become entitled during the now intended coverture, or to which she would become so entitled if she were discovert and domiciled in England and not hereby settled or agreed so to be the Wife shall have power notwithstanding coverture by deed revocable or irrevocable, or by Will or codicil, to appoint the same to such persons and for such purposes generally as she may think fit.

No. 73.

Marginal notes.

THE marginal notes hereto shall not affect the construction hereof.

(*b*) The laws of property obtaining in the country of the husband's domicile should be ascertained as well as those relating to the validity of the marriage.

PART II.

PRECEDENTS OF SETTLEMENTS (PERSONAL).

No. I.

SETTLEMENT *of* INVESTMENTS *by intended* HUSBAND *on usual* TRUSTS *for* HIMSELF, *his* WIFE *and* ISSUE (*without reference to Forms*).(*a*) (*Equitable Interests.*)

THIS SETTLEMENT is made, &c. (*date*), BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., K. L., of, &c., and M. N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:— Parties.

(1) A marriage has been agreed upon and is intended to be solemnised between the Husband and Wife: Agreement for marriage.

(2) With a view to the settlement intended to be hereby made, the Husband has caused to be transferred into the joint names of the Trustees the investments mentioned in the Schedule hereto, representing the sum of £—— sterling: Transfer of investments.

(3) Upon the treaty for the said intended marriage it was agreed that such settlement should be executed as is hereinafter contained: Agreement for Settlement.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH and it is hereby declared as follows:— Operative part.

1. THE Husband, with the privity of the Wife, hereby directs and the Trustees hereby agree with the other parties hereto that the Trustees shall and will stand possessed of the investments mentioned in the Schedule hereto, and so transferred into their joint names as aforesaid UPON TRUST for the Husband, until the said intended marriage, and after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same. Declaration of trusts of investments until marriage for husband.

(*a*) This Precedent is set out in full for the use of clerks and others who have no experience in using forms; the next Precedent gives the same result by reference to the Forms.

Trusts after marriage of investments only; to invest and vary.

2. The Trustees shall, after the solemnisation of the said intended marriage, stand possessed of the investments mentioned in the Schedule hereto Upon trust that the Trustees shall either permit the same to remain as invested or shall, with the consent of the Husband and Wife during their joint lives or of the survivor of them during his or her life, and after the death of both at the discretion of the Trustees, sell, call in or convert into money all or any of the investments, and shall with the like consent or at the like discretion invest the money arising thereby in the names or under the control of the Trustees in any of the investments hereinafter authorised, with power from time to time, with the like consent or at the like discretion, to change such investments for others of a like nature.

Definition of "the Trust Fund" and trusts thereof.

3. The Trustees shall stand possessed of the investments mentioned in the Schedule hereto and the investments for the time being representing the same (hereinafter called the Trust Fund) and of the annual income thereof Upon the trusts and subject to the powers and provisions following (that is to say)—

Trusts for Husband for life then for Wife for life.

(1) Upon trust to pay the annual income of the Trust Fund to the Husband during his life And after his death to pay the said income to the Wife if she survives him during the residue of her life without power of anticipation during any coverture:

Trusts for issue as Husband and Wife or the survivor appoint.

In default of appointment for children.

(2) After the death of both, the capital and income of the Trust Fund shall be held In trust for all or such one or more exclusively of the others or other of the issue of the said intended marriage (whether children or remoter issue) at such time and, if more than one, in such shares and with such gifts over, and such provisions for maintenance, advancement and otherwise at the discretion of any persons and generally in such manner for the benefit of such issue or some or one of them as the Husband and Wife shall by deed, revocable or irrecovable, from time to time or at any time jointly appoint:

And in default of and subject to any such appointment, then as the survivor of them shall by deed, revocable or irrevocable, or by Will or codicil appoint:

Provided that under any appointment a child shall not, otherwise than by way of advancement, take a vested interest except upon attaining the age of twenty-one years or upon marriage:

And in default of and until and subject to any such appointment In trust for all or any the children or child of the said intended marriage who attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares:

Hotchpot clause.

(3) PROVIDED that any child who or whose issue by appointment takes any part of the Trust Fund shall not, in the absence of any direction to the contrary, take any share in the unappointed part without bringing the part appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly.

Power of advancement.

4. THE statutory power of advancement applies to this settlement.

Ultimate gift over in default of issue.

5. IF there shall not be any child of the said intended marriage who attains a vested interest under the trust hereinbefore declared in default of appointment then, subject to the trusts and powers hereinbefore contained, the Trust Fund and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same, shall, after the death of the Wife and such failure of children as aforesaid, be held IN TRUST for the Husband absolutely.

Investment clause.

6. (1) MONEY liable to be invested under the trusts hereof may be invested—

(i) In any investments for the time being authorised as investments for trust money; or

(ii) On real or leasehold securities in England, Wales or Northern Ireland [or any British Dominion, Colony, State, or Dependency], but not in the Irish Free State (whether by way of registered charge or otherwise); or

(iii) In or on the stock or securities of any British Dominion, Colony, State, or Dependency, but not in the Irish Free State, or any province thereof, or of any foreign Government or State (except Russia), or of any municipal corporation or local or harbour authority in England, Wales or Northern Ireland, or any British Dominion, Colony, State or Dependency, but not in the Irish Free State; or

(iv) In or on the bonds, mortgages, debentures or debenture stock, or guaranteed or preference [or ordinary] stock or shares of any company, public or private, incorporated in the United Kingdom, or any British Dominion, Colony, State or Dependency, but not in the Irish Free State, under the Companies Acts or under any special Act of the Imperial Parliament, or of any general or special Act of the Legislature of any British Dominion, Colony, State or Dependency, but not in the Irish Free State, or by Royal Charter, and whether trading or otherwise carrying on business in Great Britain, India or any British Dominion, Colony, State or Dependency, but not in the Irish Free State [or elsewhere], which shall have paid dividends on its ordinary stock or shares for at least three years prior to the date of investment ; or

(v) On the security of any life interest, in any real or personal property, together with an insurance on the life ; or

Power to purchase land.

(vi) In the purchase and paying the costs of the purchase of any buildings, lands, perpetual rentcharges and other real estate or chattels real in or arising in England or Wales, being either freehold (subject or not to manorial incidents) or leasehold for any term of years, whereof not less than sixty years is unexpired at the time of purchase (with power to effect and maintain sinking fund policies) or in making improvements on the properties so purchased, and the same shall be conveyed to the Trustees on trust for sale with power to postpone the same, and any powers (in addition to the statutory powers) hereby conferred in relation to land and the power to appoint new trustees hereinafter contained shall be inserted in any such conveyance :

Allotment letters ; mortgage debts, &c.

(2) ANY securities accepted or acquired under sub-sections (3) and (4) of section ten of the Trustee Act, 1925, may be treated as authorised investments. And the Trustees may exercise the powers conferred by section fifteen of that Act at their absolute discretion, and in particular may release any part of a security on being satisfied that the security remaining or to be provided will be sufficient to secure any mortgage debt subject to the trust, and may agree to vary the rate of interest payable in respect of any such debt :

Bonuses to be income.

(3) ALL bonuses and other periodical payments in the nature of income accruing from or payable in respect of any of the trust premises shall, for the purposes hereof, be deemed annual income, and be applicable accordingly.

Additional powers applicable to land held on trust for sale.

7. (1) THE Trustees shall, with the consent in writing of the Husband and Wife or the survivor of them, and after the death of both at the discretion of the Trustees, have and may exercise in reference to any buildings, lands or other real estate or chattels real the proceeds of sale of which are from time to time held on the trusts hereof, the following powers in addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, namely—

Further assurances.

(i) power to exercise the powers conferred by section sixty-six of the Law of Property Act, 1925, without the leave of the court ;

(ii) power to obtain the renewal of any leases which by law are capable of being renewed and to apply capital for that purpose ; Renewals of leases.

(iii) power to carry out any of the transactions referred to in section sixty-four of the Settled Land Act, 1925, and any other transaction which under that Act is to be carried out only with the leave of the court at the discretion of the Trustees, and without any such leave. Transactions generally.

(2) ALL mining rents and royalties shall go and be applied as income and no part thereof shall be set aside as capital. Mining rents.

(3) THE powers of delegation conferred by section twenty-nine of the Law of Property Act, 1925, shall, for the purposes hereof, apply to all the statutory powers as hereby extended, provided that all capital money shall be paid to the Trustees. Delegation of powers to beneficiaries.

8. IN the execution of any of the trusts or powers hereof the Trustees :— Power for Trustees to appropriate, &c.

(1) May (without prejudice to any jurisdiction of the court) decide what money represents income and what represents capital :

(2) May, in reference to any property or the proceeds of any property from time to time subject to the trusts hereof or any share therein, and as between the persons interested, exercise the powers of appropriation and other incidental powers conferred on personal representatives by section forty-one of the Administration of Estates Act, 1925, without any of the consents made requisite by that section ; and every decision, allotment, apportionment, setting apart and valuation made in exercise of the said powers shall be as binding upon all persons then or thereafter to be beneficially interested in the premises as if the same had been duly made by a court of competent jurisdiction.

9. ANY Trustee being a solicitor or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business transacted, time expended and acts done by him or any partner of his in connexion with the trusts hereof, including acts which a trustee not being in any profession or business could have done personally. Power for professional trustee to charge.

10. THE Husband and Wife during their joint lives and the survivor of them during his or her life shall have power from time to time to appoint a new trustee or new trustees hereof. Power to appoint new trustees.

IN WITNESS whereof the parties hereto have set their hands and seals the day and year first above written.

The Schedule.

Particulars of Investments previously transferred :—

1. £——, —— Railway Company £3 10*s.* per cent. Debenture Stock.

2. £——, East India £3 per cent. Stock.

3. £——, Victorian Government £4 per cent. Inscribed Stock.

4. £——, Secured by a Mortgage dated, &c., on freehold property at ——, with interest thereon at the rate of £— per cent. per annum.(*b*)

Signed, sealed and delivered, &c.

No. Ia.

SETTLEMENT *of* Investments *by intended* Husband *on usual* Trusts *for* Himself, *his* Wife *and* Issue. (*Equitable Interests.*)

THIS SETTLEMENT is made, &c. (*as in last Prec. No.* I): Whereas :—

Recitals.

(1) *Agreement for Marriage—Form No.* 2, *p.* 113.

(2) *Transfer of investments—Form No.* 3, *p.* 114.

(3) *Agreement for Settlement—Form No.* 11, *p.* 119.

Operative part.

Commencement of operative part—Form No. 12, *p.* 119.

Trusts.

1. *Declaration of trusts of investments until marriage for Husband—Form No.* 13, *p.* 119.

2. *Trusts of investments after marriage ; to invest and vary—Form No.* 25, *p.* 126.

3. *Definition of "the Trust Fund" and trusts thereof—Form No.* 29, *p.* 128.

(1) to (3) *Trusts for Husband for life, then for Wife for life, and after death of both for issue as Husband and Wife jointly or the survivor appoint—In default for children—Hotchpot clause—Forms Nos.* 30, *p.* 128, *and* 37, *p.* 134.

Transfer of mortgage on marriage.

(*b*) For Form of transfer of this mortgage, see Prec. VIII, p. 187, *infra* ; all the investments will be separately transferred to the trustees. The stamp will be 5*s.* per £100.

Escrow.

There is no need for a clause avoiding the settlement if the marriage is not solemnised within six months. The deed will be executed as an escrow, and will not be delivered if the marriage does not take place. The investments would be ordered to be retransferred in that case.

4. *Advancement, statutory—Form No.* 39A, *p.* 137.

5. *Trust in default of children for Husband—Form No.* 41, *p.* 137, *omitting sub-clause* (2).

6. *Investment clauses—Form No.* 51, *p.* 152, *including power to purchase land.* Powers of Trustees.

7. *Additional powers—Form No.* 56, *p.* 159.

8. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 162, *omitting sub-clause* (1).

[9. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.]

10. *Power for professional Trustees to charge—Form No.* 66, *p.* 165.

11. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

IN WITNESS, &c.

THE SCHEDULE.

(*As in last Precedent, and see note thereto.*)

No. II.

SETTLEMENT *of* INVESTMENTS *by intended* WIFE *on* TRUSTS *for* HERSELF, *her* HUSBAND *and* ISSUE, *where the* HUSBAND *is given a* REVERSIONARY ANNUITY *only.* POWER *for* WIFE *to* RESETTLE *part on* FUTURE MARRIAGE. (*Equitable Interests.*)

THIS SETTLEMENT is made, &c., BETWEEN C. D., of, &c., Spinster (hereinafter called the Wife), of the 1st part, A. B., of, &c. (hereinafter called the Husband), of the 2nd part, and E. F., of, &c., G. H., of, &c., K. L., of, &c., and M. N., of, &c. (hereinafter called the Trustees) of the 3rd part: WHEREAS:— Parties.

(1) *Agreement for Marriage—Form No.* 2, *p.* 113.

(2) *Transfer of investments—Form No.* 3, *p.* 114. Recitals.

(3) *Agreement for Settlement—Form No.* 11, *p.* 119.

Commencement of operative parts—Form No. 12, *p.* 119. Operative parts.

1. *Declaration of trusts of investments until marriage for Wife —Form No.* 13, *p.* 119. Trusts and powers.

2. *Trusts after marriage of investments to invest and vary—Form No.* 25, *p.* 126.

3. *Definition of "the Trust Fund" and trusts thereof—Form No.* 29, *p.* 128.

(1) to (5) *Trusts for Wife for life, then for payment of annuity to Husband, and after death of Wife, but subject to Husband's*

annuity if he survives her, for issue as Husband (*c*) *and Wife jointly or the survivor appoint—In default for children—Hotchpot clause—Trusts of surplus income after payment of Husband's annuity—Forms Nos.* 35, 36, 37 *and* 45, *pp.* 133–35, 140.

4. *Advancement statutory power—Form No.* 39A, *p.* 137.

5. *Trusts in default of children for Wife—Form No.* 41, *p.* 137, *omitting sub-clause* (1) *and using the variations in the notes to the Form where only one fund is settled and the Husband takes an annuity.*

6. *Power for Wife to resettle on future marriage—Form No.* 46, *p.* 140.

7. *Investment clause—Form No.* 51, *p.* 152, *including power to purchase land.*

8. *Additional powers as to land—Form No.* 56, *p.* 159.

9. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 163, *omitting sub-clause* (1).

10. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

11. *Power for professional Trustees to charge—Form No.* 66, *p.* 165.

12. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of Investments.(*d*)

No. III.

SETTLEMENT *by intended* HUSBAND *of* POLICY (*e*) *on his Life.* VARIATIONS *where he* DEMISES *his* LIFE INTEREST *in Settled Land to secure the Premiums.* (*Equitable Interests.*)

Parties. THIS SETTLEMENT is made, &c. (*as in Prec.* I, *p.* 169): WHEREAS :—

Recitals. (1) *Agreement for marriage—Form No.* 2, *p.* 113.

(*c*) If the power of appointment in favour of the husband as survivor is omitted, Form No. 45, p. 140, as to surplus income will not be required.

(*d*) See note to schedule of Prec. No. I, p. 174.

Notice of assignment. (*e*) Notice in duplicate of the assignment of the policy must be given to the insurance company: Policies of Assurance Act, 1867. In the case of an endowment policy variations must be made in this precedent. It may be desired to give the husband the first life interest. The stamp on this deed

(2) *Title to policy—Form No.* 3A, *p.* 114.

(3) *Agreement for Settlement—Form No.* 11, *p.* 119.

Operative part.

Commencement of operative part—Form No. 12, *p.* 119.

Trusts and powers.

1. *Assignment of policy by Husband to Trustees and trusts until marriage, &c.—Form No.* 24, *p.* 124.

Trust to invest.

2. THE Trustees shall with the consent of the Wife during her life if she survives the Husband, and after her death at their discretion, invest the residue of the said money in the names or under the control of the Trustees in any of the investments hereinafter authorised, with power from time to time with the like consent or at the like discretion to change such investments for others of a like nature.

Definition of Trust Fund and trusts.

3. THE Trustees shall stand possessed of the residue of the said money and the investments for the time being representing the same (hereinafter called the Trust Fund) and of the annual income thereof Upon the trusts and subject to the powers and provisions following (that is to say):—

Wife for life.

(1) UPON TRUST to pay the annual income of the Trust Fund to the Wife if she survives the Husband during the residue of her life, without power of anticipation during any coverture:

(2) AFTER the death of the survivor of the Husband and Wife the capital and income of the Trust Fund shall be held (*trusts for issue—Form No.* 37, *p.* 134).

4. *Advancement statutory power—Form No.* 39A, *p.* 137.

5. *Trust in default of children for Husband—Form No.* 41, *p.* 137, *omitting sub-clause* (2).

6. *Investment clause—Form No.* 51, *p.* 152.

7. *Covenant by Husband to keep up policy and provisions relating thereto* (*f*)—*Form No.* 49, *p.* 148, *omitting sub-clause* (2).

Effect of enactment that assignment of policy shall confer no right to sue unless stamped.

will be 5*s.* per £100 on the sum assured. By the Stamp Act, 1891, s. 118, it is provided that no assignment of a policy of life assurance shall confer on the assignee any right to sue, or give a valid discharge, for the money assured thereby, unless the assignment is duly stamped, and that no payment shall be made to any person claiming under such assignment unless the same is duly stamped. If any payment is made in contravention of this section, the person by whom the payment is made is liable for the penalty. It is apprehended that this enactment does not invalidate the assignment, but merely prevents the assignee from suing for the money until it is stamped. Hence, if A. assigns the policy first to B. and then to C., but the assignment to B. is not stamped until after the assignment to C., B. is not on that account postponed to C.

Lien for insurance money.

(*f*) In this case, as the only trust fund is the policy money, the trustees have no means of keeping up the policy; hence sub-clause (2) of Form No. 49, p. 148, will not be required; a wife, who by reason of her husband's want of means pays premiums voluntarily to prevent a policy from lapsing is not

Power for Settlor to redeem policy and trusts of redemption money.

8. THE Husband may at any time during his life redeem the policy hereby assigned or any policy substituted therefor by paying to the Trustees the sum of £——, and in such case the policy shall be reassigned to the Husband at his expense discharged from the trusts, powers and provisions hereof, and the Trustees shall stand possessed of the said sum of £—— so paid by the Husband, Upon the trusts and subject to the powers

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entitled to a lien on the insurance money: *Re Jones* [1915], 1 Ch. 373; 84 L. J. Ch. 406.

Where the husband demises his life interest in settled lands to secure the payment of the premiums on the policy, add immediately after the recital of the husband's title to the policy as above:—

Recital of Husband's life interest.

(3) Under the Will dated, &c., and proved in the Probate Registry on, &c., of ——, who died on, &c., and by virtue of a Vesting Assent, dated, &c., the freehold properties hereinafter demised are now vested in the Husband in fee simple IN TRUST for himself during his life without impeachment for waste with divers remainders over.

And the witnessing part immediately following the above assignment of the policy should be as follows:—

Demise of equitable life interest in settled land.

The Husband, with the privity of the Wife, hereby, As Settlor demises unto the Trustees:

ALL, &c. (*referring to a Schedule*),

TO HOLD unto the Trustees for the term of ninety-nine years from the day next before the date hereof if the Husband shall so long live without impeachment of waste UPON TRUST for the Husband until the solemnisation of the said marriage: And after the solemnisation thereof UPON TRUST out of the rents and profits of the premises to raise and pay any money which may become payable by the Husband under his covenant hereinafter contained with reference to the policy hereinbefore assigned or any policies to be substituted therefor; And also to raise and pay any other money hereinafter authorised to be raised and paid out of such rents and profits for purposes connected with any such policy (*i.e., under Form No.* 49, *p.* 148, *and see the words at the end of this note*): And subject to the trusts aforesaid the Trustees shall pay the rents and profits of the premises or so much thereof as shall not from time to time be required to answer the trusts aforesaid unto or permit the same to be received by the Husband.

The demise does not affect the statutory powers: S. L. Act, 1925, s. 104 (11). Notice in writing of the demise must be given to the S. L. Act trustees: L. P. Act, 1925, s. 137. In the case of registered land a priority caution should be registered in the Minor Interests Index: L. R. R., 1925, r. 229.

and provisions hereinbefore declared concerning the money to be received in respect of the policy :

Provided that—

(i) During the joint lives of the Husband and Wife, and the life of the survivor of them, every investment or variation of investment of the said sum of £—— shall be made with their, his or her consent ;

(ii) The income of the said sum of £——, and the investments representing the same, shall be paid to the Husband during his life ;

(iii) The statutory power of advancement shall be exercised during the joint lives of the Husband and Wife, or the life of the survivor of them only, with their, his or her consent in writing.

9. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 163, *omitting first sub-clause.*

10. *Indemnity for Trustees, if required—Form No.* 62, *p.* 163.

11. *Power for professional Trustees to charge—Form No.* 66, *p.* 165.

12. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

In witness, &c.

No. IV.

APPOINTMENT (*g*) *by* Father *and* Mother *to their* Daughter *in contemplation of Marriage of a* Reversionary Share *in Settled Personalty.* Variation *where a Reversionary Sum is appointed ; also where a Reversion was originally settled.*

THIS APPOINTMENT is made this, &c. (*date*), by A. B. (*Father of intended wife*), of, &c., and C. B. (*Mother*), his wife (hereinafter called the Appointors) : Whereas :—

(1) This Deed is supplemental to a Settlement (hereinafter

Recital of Settlement conferring power of appointment.

Where a life interest is demised, the following words should be added to the power of the trustees to keep up or restore the policy or effect a new policy, in the second clause of Form No. 49, p. 149, after the word "discretion" :—"raise and pay out of the rents and profits of the property hereinbefore demised, or if such rents and profits be insufficient, then" (*continue as in Form No.* 49, *p.* 148).

(*g*) Notice in writing of the appointment must be given to the trustees of the settled funds : L. P. Act, 1925, s. 137, unless a trust corporation has been appointed to receive and register notices : *ib.*, s. 138. An appointment may be made to trustees in trust for an object of the power ; in practice, the appointed share is assigned and settled by the marriage settlement. An appointment to trustees involves unnecessary complications, and nothing is gained by it.

Appointment not to be made to trustees.

called the Principal Deed) dated, &c., and made, &c. (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the Appointors), whereby it was agreed that after the solemnisation of the then intended marriage certain investments which had been previously transferred into the joint names of the parties thereto of the third part and the varied investments for the time being representing the same (*h*) should be held UPON TRUST for payment of the income thereof to the Appointors successively during their respective lives and after the death of the survivor (as to capital and income) IN TRUST for all or such one or more exclusively of the others or other of the issue of the said then intended marriage (whether children or remoter issue), at such time, and, if more than one, in such shares as the Appointors should by deed, revocable or irrevocable, from time to time or at any time jointly appoint, with certain trusts over in default of appointment [and the Principal Deed contained a covenant for the settlement of certain after-acquired property of the said —— (*Mother*), but no property has hitherto become subject to this covenant (*i*)]:

Issue of marriage.

(2) There has been issue of the said marriage —— children and no more, of whom D. B., who was born on the —— day of ——, is one:

Present state of investments.

(3) THE investments so transferred into the joint names of the parties of the third part to the Principal Deed are now represented by the investments mentioned in the Schedule hereto, and are now standing in the joint names of M. and N., the present trustees of the Principal Deed:

Variations where reversion was originally settled.

(*h*) If only a reversionary interest was settled say instead of "certain investments, &c.":—the reversionary sum of £—— [*or* the one-third reversionary share and premises] thereby assigned to the parties thereto of the 3rd part should (when it fell into possession) be held, &c., and add the following recital after the recital of the issue of the marriage in place of (3) in the text:—

(3) After the execution of the Principal Deed the said reversionary sum of £—— [*or* the said one-third reversionary share and premises] fell into possession and is now represented by the investments mentioned in the Schedule hereto and now standing in the joint names of M. and N., the present trustees of the Principal Deed:

(*i*) If any property has been brought into settlement under the covenant the fact should be mentioned.

Agreement for marriage, and desire to appoint.

(4) (*Recite agreement for marriage of D. B., see Form No. 2, p. 113, and add:*) and the Appointors are desirous of making such appointment as hereinafter contained:
NOW, for effectuating such desire, and in exercise of the power for this purpose conferred by the Principal Deed and of every other power, THIS DEED WITNESSETH as follows:—

Appointment of a share.

1. The Appointors hereby appoint that (*j*) one equal —— share of the investments mentioned in the Schedule hereto and of all other (if any) the investments now held on the trusts of the Principal Deed [and also of any other property which by virtue of the said covenant to settle after-acquired property or otherwise may be or become subject to the trusts of the Principal Deed] and of the varied investments for the time being representing the same shall, after the death of the survivor of the Appointors, and in the meantime subject to their respective life interests therein be held In trust for the said D. B. absolutely:(*k*)

Variation where sum of money appointed.

(*j*) Where a sum of money raisable out of the trust funds is appointed say:— "the trustees for the time being of the Principal Deed shall, after the death of the survivor of the Appointors, raise and pay (free from all duties and the costs of raising the same) the net sum of £—— out of the investments, &c. (*as in the text down to* "the same"), with interest thereon, at the rate of £4 per cent. per annum from the death of such survivor, and shall hold such sum and the interest thereon In trust for the said D. B. absolutely."

Duties; costs.

As to the direction that the sum shall be free of duties, see *Re Coxwell* [1910], 1 Ch. 63; 79 L. J. Ch. 62; as to how costs (including costs of administration of the trust) and duties are to be borne if the sum appointed is not a "net" sum: see *Re Shaw* [1895], 1 Ch. 343, 347; 64 L. J. Ch. 283; *Re Orford* [1896], 1 Ch. 257; 65 L. J. Ch. 253; *Re Chisholm* [1902], 1 Ch. 457; 71 L. J. Ch. 289; see also article in 59 Sol. J. 299.

Hotchpot clause.

(*k*) If the settlement under which the appointment is made does not contain a hotchpot clause a provision should be added as follows:—

2. Provided that the said D. B. shall not take any share in the unappointed part of the Trust Funds subject to the trusts of the Principal Deed without bringing the share [sum] hereby appointed to her into hotchpot and accounting for the same accordingly.

If the settlement does not contain a proper power of appropriation, the following provision should be added:—

Power to appropriate.

3. Provided also that the trustees or trustee for the time being of the Principal Deed may appropriate at the mesne

Appointment to be void if marriage not solemnised.

2. PROVIDED that if the said intended marriage shall not be solemnised within six months from the date hereof, the appointment hereby made shall become and be absolutely void.

IN WITNESS whereof the Appointors have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE.

Particulars of investments now held upon the trusts of the Principal Deed.(*l*)

(*Add these particulars.*)

No. V.

APPOINTMENT *of a* PORTION *raisable under the trusts of an Equitable* TERM *by a* FATHER *to a* YOUNGER SON *with a view to his* MARRIAGE.(*m*) (*Equitable Interest.*)

THIS APPOINTMENT is made this —— day of ——, by A. B. (*Father of intended husband*), of, &c. (hereinafter called the Appointor): WHEREAS :—

Settlement (made before 1926) creating portions term and conferring power of appointment in favour of younger children or their issue.

(1) By a Deed (hereinafter called the Settlement) dated, &c., and made between the Appointor of the 1st part, C. H., Spinster (afterwards and hereinafter called C. B.), of the 2nd part, and P. Q. and R. S. (hereinafter called the Trustees), of the 3rd part, being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the Appointor and C. B., the Manor of ——, and the capital and other messuages, lands and property situated in the Parish of ——, in the County of ——, were after the said marriage limited To the Use of the Appointor, during his life, without impeachment of waste, with remainder To the Use that C. B., if she should survive the Appointor, should receive thereout, during her life, a yearly

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market price of the day or at a valuation any investments subject to the trusts of that Deed in or towards satisfaction of the premises hereinbefore appointed.

(*l*) It is sometimes desirable to number the investments in the schedule and to add a note at the end, *e.g.*, "N.B.—The investments numbered 1 and 2 represent the funds originally settled. Nos. 3 and 4 represent a legacy of £—— bequeathed to the said C. B. and brought into settlement by her under the said covenant to settle after-acquired property."

(*m*) See Prec. XIV, Settlements (Real), *infra*, p. 370, for a Precedent of an appointment of a jointure and portions, and a term to secure the same, under powers in a settlement of realty.

jointure rent-charge of £——, and subject thereto To the Use of the Trustees for a term of one thousand years, to commence from the death of the Appointor Upon the trusts hereinafter mentioned and subject thereto To the Use of the first and other sons of the then intended marriage, successively according to seniority in tail male, with remainders over; And it was thereby declared that the Trustees should stand possessed of the said term of one thousand years UPON TRUST if there should be any child or children of the then intended marriage (other than and except an eldest or only or other son for the time being entitled to the first estate of freehold in the said property under the limitations of the Settlement), who should attain the age of twenty-one years, or being female marry under that age, then after the death of the Appointor or in his lifetime, with his consent in writing, to raise, in manner therein mentioned, for the portion or portions of such child or children (except as aforesaid) and the issue of any such child, in case there should be three or more such children, the sum of £——, with interest thereon at the rate of £— from the death of the Appointor until raised, such sum to be held Upon such trusts for the benefit of the said children and issue or any one or more of them exclusively of the other or others and in such shares and in such manner as the Appointor should by any deed or deeds, revocable or irrevocable, or by Will or codicil appoint: And the Trustees were appointed to be the Trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890.

Trust to raise portions for younger children.

(2) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Appointor of the other part it was declared that the said property was vested (*n*) in the Appointor in fee simple Upon the trusts of the Settlement and that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

Vesting Deed.

(3) There has been issue of the said marriage ——, an eldest son and three other children, all of whom have attained the respective ages of twenty-one years and of whom E. B., who was born on the —— day of ——, is one:

Three younger children and of whom intended appointee is one.(*o*)

(*n*) The effect of the vesting deed is to convert the portions term into an equitable term, but without affecting a purchaser for money's worth: S. L. Act, 1925, 2nd Sch., para. 1 (6); L. P. (Amend.) Act, 1926, Sch.

Equitable term.

(*o*) If the younger child subsequently becomes entitled as tenant in tail, he does not forfeit the portion appointed: *Re Bankes* (1909), 101 L. T. 778.

Agreement for marriage and desire to appoint.

(4) (*Agreement for marriage of E. B., see Form No. 2, p.* 113) and the Appointor is desirous of making such appointment as hereinafter contained:

NOW, for effectuating such desire and in exercise of the power for this purpose conferred by the Settlement and of every other power, THIS DEED WITNESSETH as follows:—

Appointment of a portion.

1. THE Appointor hereby appoints that the trustees for the time being of the term of one thousand years limited by the Settlement shall, after his death, raise out of the said sum of £—— portions and pay (free from all duties and the costs of raising the same) the net sum of £—— as the portion of the said E. B., with interest thereon from the death of the Appointor at the rate (*p*) of £4 per cent. per annum, and shall hold such sum and the interest thereon IN TRUST for the said E. B. absolutely:(*q*)

2. PROVIDED that if the said intended marriage shall not be solemnised within six months from the date hereof, the appointment hereby made shall become and be absolutely void.

IN WITNESS whereof the Appointor has hereunto set his hand and seal the day and year first above written.

No. VI.

CONVEYANCE *of* FREEHOLDS (*subject as to part to* MANORIAL INCIDENTS) *and* LEASEHOLDS, *on* TRUST *for* SALE, *by intended* HUSBAND, *the proceeds to be settled by* DEED *of even date.*(*r*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c..

(*p*) This will be the rate authorised under the trusts of the term.

Where there is merely a power to create family charges.

If there is no subsisting term, but merely power to appoint a term, then the term must be appointed by one deed for the general purposes of the term, and the portions must be appointed by deeds which will be supplemental to the settlement or resettlement creating the power to charge and also to the deed by which the term is created.

(*q*) If the trusts of the term do not contain a hotchpot clause a provision should be added as follows:—

Hotchpot.

2. PROVIDED that the said E. B. shall not take any share in the unappointed part of the money to be raised under the trusts of the said term without bringing the sum hereby appointed to him into hotchpot and accounting for the same accordingly.

(*r*) For the statutory provisions affecting land held on trust for sale: L. P. Act, 1925, ss. 23 to 33, as amended by L. P. (Amend.) Act, 1926, Sch.

When land becomes subject to a trust for sale it is no longer "settled land" within S. L. Act, 1925, see L. P. (Amend.) Act, 1926, Sch., amending ss. 1

Spinster (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., K. L., of, &c., and M. N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

(1) (*Recite agreement for marriage—Form No.* 2, *p.* 113.)

Seisin of freeholds and enfranchised land.

(2) The Husband is seised in possession free from incumbrances of the freehold and enfranchised lands hereinafter described for an estate in fee simple, but as to the enfranchised lands subject to the manorial incidents and to the rights of the lord of the Manor of —— in respect thereof:

Lease.

(3) By a Lease dated, &c., and made, &c., All those, &c., were demised by the said —— to the Husband (*or other lessee*) for the term of —— years from the —— day of —— at the rent and subject to the covenants by the lessee and the conditions by and in the said Lease reserved and contained:

(4) (*Add recital of mesne assignments of the Lease, if required*):

(5) (*Recite agreement for settlement—Form No.* 11, *p.* 119):

Operative part.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

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and 3 of the S. L. Act, hence, if desired, it can be sold subject to a family charge. But though the trust for sale is created after an equitable interest still a conveyance under the trust for sale will over-reach the equitable interest, provided that either a trust corporation is acting or the trustees have been appointed or approved by the court, for L. P. Act, 1925, s. 2 (2), as amended by the said schedule now runs as follows:—

Over-reaching trusts for sale.

Trust for sale, with approved trustees.

"Where the legal estate affected is subject to a trust for sale, then, if at the date of a conveyance made after the commencement of this Act under the trust for sale or the powers conferred on trustees for sale, the trustees (whether original or substituted) are either—

"(a) two or more individuals approved or appointed by the Court or the successors in office of the individuals so approved or appointed; or

"(b) a trust corporation;

any equitable interest or power having priority to the trust for sale shall, notwithstanding any stipulation to the contrary, be over-reached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale."

All trusts for sale are "binding."

Thus *all* effective trusts for sale become "binding" (*i.e.*, capable of over-reaching equitable interests) within *Re Leigh*, 70 Sol. J. 758; *ib.*, Art. 749, 769; it is merely a matter, in some cases, of subsequently obtaining the approval of the trustees, or appointing a trust corporation to act.

Trusts kept off the title.

All proceeds of sale and other capital money must be paid either to a trust corporation or to at least two trustees; a purchaser is not concerned with the trusts affecting the proceeds of sale: L. P. Act, 1925, s. 27.

Conveyance of freeholds.

1. (*Form No.* 20, *sub-clause* (1) *only, p.* 121).(*s*)

Conveyance of enfranchised land.

2. (*Form No.* 21, *p.* 122, *sub-clause* (1) *only. See that the Conveyance is produced to the steward.*)

Assignment of leaseholds.

3. (*Form No.* 22, *p.* 123, *sub-clause* (1) *only.*)

Trust for sale.

4. The Trustees shall sell the properties hereinbefore respectively conveyed and assigned, but so that during the joint lives of the Husband and Wife and the life of the survivor of them every sale be made only with their, his or her consent in writing.

Proceeds of sale to be held on trusts of deed of even date.

5. The Trustees shall stand possessed of the net proceeds of sale arising under the trust aforesaid (after payment thereout of all costs incidental thereto) and all other capital arising under the statutory powers (as hereby extended), and also of the rents and profits of the premises until sale, and as respects the said leasehold property after payment of the rent reserved by and all outgoings payable under the recited Lease Upon the trusts and subject to the powers and provisions declared concerning the same by a Settlement already prepared and intended to bear even date herewith and to be made between the same persons and in the same order and to be executed immediately after this Conveyance.

6. (*Power to postpone sale—Clause* (4) *of Form* 20, *p.* 122.)

Powers, &c.

7. (*Additional powers—Form No.* 56, *p.* 159, *omitting the parts in square brackets, but adding, if desired, in the case of registered land :* "No restriction against dispositions without the consent of the Husband and Wife or the survivor of them shall be required in the case of registered land.")

8. (*Power to appoint new Trustees—Form No.* 68, *p.* 166.(*t*))

In witness, &c. (*Add three Schedules of parcels.*)

Variations where settlor is registered proprietor under L. R. Act.

(*s*) If the settlor is registered under the L. R. Act, 1925, say :—Of all which property the Husband is registered as proprietor with [*an absolute possessory, good leasehold*] title under the Land Registration Act, 1925, under the heading District ——, Title No. ——, Property ——.

The settlor must also execute a transfer (see next Precedent) of even date to the trustees, and this should be recited. If registered land only is being conveyed this can be done in the Personalty Settlement on trust for sale (without a separate conveyance on trust for sale) for the register keeps the trusts off the title.

Separate appointments of new trustees.

(*t*) On the appointment of new trustees of the settlement of even date new trustees of the conveyance on trust for sale must be appointed by a separate deed: T. Act, 1925, s. 35.

No. VII.

INSTRUMENT *of* TRANSFER *where the* LAND *conveyed on* TRUST *for* SALE *is* REGISTERED *under the* LAND REGISTRATION ACT, 1925.

H.M. Land Registry.

Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

(*Date.*) IN consideration of my intended marriage with C. D., of, &c., I, A. B., of, &c., As Settlor, hereby transfer to E. F., of, &c., G. H., of, &c., K. L., of, &c., and M. N., of, &c., the land comprised in the title above referred to, and apply for the registration of the Restriction following (namely) :—

Except under an Order of the Registrar, no disposition is to be registered unless authorised by the Settled Land Act, 1925, and except where the sole proprietor is a trust corporation, no disposition under which capital money arises is to be registered unless the money is paid to at least two proprietors.(*u*)

No. VIII.

TRANSFER *of a* MORTGAGE DEBT *and* SECURITIES *by intended* HUSBAND *to* TRUSTEES *to be held on* TRUSTS *of a* SETTLEMENT *of even date.*(*v*) (*Legal Estate.*)

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, Parties.

(*u*) The powers of trustees for sale are given by L. P. Act, 1925, s. 28, by reference to the S. L. Act, 1925; for the purposes of restriction No. 10 (that in the text), references to powers given by that Act include additional powers: L. R. Rules, 1925, r. 58 (2). Trustees holding registered land on trust for sale must be registered as the proprietors thereof: L. R. Act, 1925, s. 94.

(*v*) In the settlement the transfer need not be recited; it is not usual to do so. The amount of the mortgage debt will be mentioned in a schedule of investments as "£——, secured by a Mortgage dated, &c., on the ——Estate, in the County of——." No recital of transfer of mortgage required.

If desired, the transfer may be made by endorsement, but if it has to be sent to different places for execution it is safer to effect it by supplemental deed.

C. D., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., K. L., of, &c., and M. N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS :—

Mortgage.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made, &c., whereby certain freehold properties at ——, &c., were conveyed by the said —— (*Mortgagor*) to the Husband in fee simple by way of mortgage for securing payment to the Husband of the principal sum of £—— with interest thereon at the rate of £— per cent. per annum: And by virtue of the Law of Property Act, 1925, the said properties are now vested in the Husband for a term of 3,000 years without impeachment of waste, subject to cesser on redemption under the Principal Deed:

[Variation where the mortgage was made after 1925.]

[*Parties, &c., as above, and continue*—"Whereby certain freehold properties at ——, &c., were charged by way of legal mortgage for securing payment to the Husband of the principal sum of £—— with interest thereon at the rate of £— per cent. per annum]:

Intended marriage.

(2) (*Agreement for marriage—Form No. 2, p.* 113):

State of mortgage debt.

(3) The said sum of £——, with the current half-year's interest thereon, is still owing to the Husband upon the security of the Principal Deed:

Agreement for transfer.

(4) Upon the treaty for the said marriage it was agreed that the said sum of £—— and the interest thereon, with the securities for the same, should be transferred to the Trustees upon the trusts hereinafter mentioned or referred to: (*w*)

Operative part.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH and it is hereby declared as follows :—

Transfer of debt and securities (including any mortgage term).

1. THE Husband, As Mortgagee, and with the privity of the Wife, hereby conveys and transfers to the Trustees the benefit of the Principal Deed.

Trusts of mortgage debt.

2. THE Trustees shall stand possessed of the said mortgage debt and the interest due and to become due thereon UPON TRUST for the Husband until the said intended marriage, and

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Settlement kept off the title.

(*w*) These trusts are so arranged as not to bring the settlement of the mortgage debt on to the title to the land; but a purchaser of the land is no longer concerned with the trusts affecting the mortgage debt, whether or not he has notice: L. P. Act, 1925, s. 113. This transfer takes effect under *ib.*, s. 114.

after the solemnisation thereof Upon the trusts and subject to the powers and provisions declared by a Settlement already prepared and intended to bear even date herewith and to be made between, &c., and to be executed immediately after this deed.(x)

3. *(Power to appoint new Trustees—Form No.* 68, *p.* 166.(*y*))

IN WITNESS, &c.

No. IX.

TRANSFER *of* REGISTERED CHARGE *on* REGISTERED LAND *to* TRUSTEES *of* SETTLEMENT.(z)

H.M. Land Registry.

Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

Intended Husband transfers Charge to Trustees.

(*Date.*) In consideration of my intended marriage with C. D., of, &c., I, A. B., of, &c. (*Husband*), hereby transfer to E. F., of, &c., G. H., of, &c., K. L., of, &c., and M. N., of, &c. (*Trustees*), the Charge dated the —— day of ——, 19—, and registered the —— day of ——, 19—, of which I am the proprietor.

Signed, sealed and delivered, &c.

(x) This is the settlement of the mortgage debt.

Receipts by new trustees.

(y) This transfer is an independent trust deed, and contains a separate power to appoint new trustees, which should be exercised by the deed by which the mortgage debt and securities are subsequently transferred and not by the deed by which new trustees of the settlement of even date are appointed. The money being settled, is necessarily held by the trustees upon a joint account, see L. P. Act, 1925, s. 111, which section, however, is not required in this case, for T. Act, 1925, s. 14 (which is retrospective) is sufficient. In a transfer of mortgage *after* the execution of the settlement to secure settlement money advanced under the investment clause the mortgage debt should be transferred to the then trustees without reference to the trusts. Notice in writing of the transfer of the mortgage should be given to the mortgagor, and to any subsequent incumbrancers; this applies whether or not a land charge has been registered in respect of the mortgage.

Advance by way of investment.

Notice.

(z) This is the prescribed Form 54, in the schedule to the L. R. Rules, 1925. The marriage will not be referred to if the trustees are, after the marriage, laying out part of the trust money in taking a transfer of a mortgage.

No. X.

SETTLEMENT *by intended* HUSBAND *of* PROCEEDS *of* SALE *of* LAND *conveyed by* DEED *of even date and of* INVESTMENTS, *and by intended* WIFE *of* REVERSIONARY INTERESTS *on usual Trusts.* POWER *for* HUSBAND *and* WIFE *to make* NEW SETTLEMENTS *on remarriage.*(*a*) (*Equitable Interests.*)

THIS SETTLEMENT is made, &c. (*as in Prec.* I, *p.* 169): WHEREAS :—

Recitals.

(1) *Agreement for marriage—Form No.* 2, *p.* 113.

(2) *Conveyance of freeholds of even date* (*b*)*—Form No.* 8. *p.* 116.

(3) *Transfer of investments by Husband—Form No.* 3, *p.* 114. *Refer to first Schedule. This may include a mortgage debt, see Prec. VIII, supra, and note thereto, p.* 189.

(4) *Title of Wife to share under a Settlement and Appointment* (*c*) *—Form No.* 4, *p.* 114. *Refer to second Schedule.*

(5) *Agreement for Settlement—Form No.* 11, *p.* 119.

Operative part.

Commencement of operative part—Form No. 12, *p.* 119.

Trusts.

1. *Declaration of trusts of investments until marriage for Husband* (*d*)*—Form No.* 13, *p.* 119.

2. *Assignment of reversionary share by Wife to Trustees* (*e*)*—Forms Nos.* 14, 15 *and* 19, *pp.* 120–21, *and, if desired, sub-clause* (4) *of Form No.* 23, *p.* 124, *with variation in note.*

3. *Trusts after marriage of investments, proceeds of sale of land conveyed by deed of even date and reversionary share, to invest and vary—Form No.* 28, *p.* 127, *omitting references to principal sum covenanted to be paid and to a portion.*

4. *Definition of the Husband's "Trust Fund" and the "Wife's Trust Fund" and trusts thereof—adapt Form No.* 31, *p.* 128.

(1) and (2) *Successive life interests to Husband and Wife in both Funds—Form No.* 32, *p.* 129.

Stamp on contingent reversionary interests.

(*a*) Where contingent reversionary interests are settled on a marriage *ad valorem* settlement stamp duty is payable on the best existing interest, notwithstanding that the interest may be defeated by the happening of the contingency : *Onslow* v. *I. R. C.* [1891], 1 Q. B. 239 ; 60 L. J. Q. B. 138.

(*b*) For leaseholds, see Form No. 9, p. 116, also Prec. VI, p.184.

(*c*) See also Forms Nos. 5, 6, and 7, pp. 115–16.

(*d*) With regard to the land conveyed on trust for sale by deed of even date, the trust for sale does not take effect until after the marriage ; hence the proceeds of sale must not be referred to here, but later in the Precedent.

Notice.

(*e*) See also Forms Nos. 16–17A, pp. 120–21. Notice in writing of the assignment as well as of the appointment should be given to the trustees of the settlement under which the appointment was made.

(3) and (4) *After death of Husband and Wife for issue as they jointly or the survivor appoint—In default for children —Hotchpot clause—Form No.* 37, *pp.* 134–35.

5. *Advancement statutory power—Form No.* 39A, *p.* 137.

6. *Trust in default of children in respect of both Funds—Form No.* 41, *p.* 137.

7. *Power for Husband or Wife to make Settlement on future marriage* (*f*)—*Form No.* 47, *p.* 142.

8. *Provisions as to land conveyed on trust for sale by deed of even date. Application of rents until sale—Form No.* 52, *p.* 155.

Powers of Trustees.

9. *Investment clause and sub-clauses thereto—Form No.* 51, *p.* 152 (*including power to purchase land*).(*g*)

10. *Additional powers as respects land—Form No.* 56, *p.* 159.

11. *Power if desired for Trustees to accept conveyance of land held upon trust for sale—Form No.* 57, *p.* 160, *where the reversionary interest consists of a share in the net proceeds of land held on trust for sale.*

12. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 162, *including sub-clause* (1).

13. *Power for Trustees to allow existing investments held on trusts of the Settlement, under which the reversionary share is derived, to remain—Form No.* 63, *p.* 164.

14. *Extension of power to delegate trusts—Form No.* 65, *p.* 165.

15. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

16. *Power for professional trustees to charge—Form No.* 66, *p.* 165.

17. *Examination of trust accounts, if desired—Form No.* 67, *p.* 165.

18. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

19. *Marginal Notes—Form No.* 73, *p.* 168.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of investments previously transferred by the Husband.

(*f*) If the husband and wife are to have power to appoint the whole of their funds between their respective issue by any marriage it is not necessary or expedient in the original settlement to declare trusts in default of appointment in favour of any persons except children of the intended marriage, or to extend the original power of appointment beyond the issue of that marriage. The power to resettle on a future marriage can be made to apply to the whole fund, subject to restrictions.

When power to purchase land should be given.

(*g*) Whenever proceeds of sale of land are settled it is desirable to give an express power to acquire further land, though the actual proceeds of land sold are liable to be laid out in the purchase of other land: L. P. Act, 1925, s. 28.

THE SECOND SCHEDULE.

Particulars of investments now subject to the trusts of the Settlement of 19—.

No. XI.

SETTLEMENT *by intended* HUSBAND *of* INVESTMENTS, MORTGAGE DEBT, REGISTERED CHARGE, PORTION *and* POLICY, *and by intended* WIFE *of* PROCEEDS *of* SALE *of* LAND *conveyed by* DEED *of even Date*, REVERSIONARY INTEREST *and* AFTER-ACQUIRED PROPERTY, *where* HUSBAND'S FATHER *covenants to pay a* PRINCIPAL SUM *and* WIFE'S FATHER *an* ANNUAL SUM. *Usual Trusts for* HUSBAND, WIFE *and* ISSUE. VARIATIONS *where a* SON, *who becomes entitled to certain Settled Estates, is* EXCLUDED *from taking in Default of Appointment;* ALSO *where there are to be* DISCRETIONARY TRUSTS *or where the* HUSBAND *is given a* PROTECTED LIFE INTEREST *in both* FUNDS. (*Equitable Interests.*)

Parties.

THIS SETTLEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), a younger son of J. B., of, &c., of the 1st part, C. D., Spinster (hereinafter called the Wife), a daughter of H. D., of, &c., of the 2nd part, the said J. B. (*Husband's Father*), of the 3rd part, the said H. D. (*Wife's Father*), of the 4th part, and W., of, &c., X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called the Trustees), of the 5th part: WHEREAS:—

Recitals.

(1) *Agreement for marriage—Form No.* 2, *p.* 113.

(2) *Transfer of investments by Husband* (*h*)—*Form No.* 3, *p.* 114. *Refer to first Schedule.*

(3) *Title of Husband to a portion—Form No.* 7, *p.* 116.

(4) *Title to policy—Form No.* 3A, *p.* 114.

(5) *Conveyance of freeholds of even date—Form No.* 8, *p.* 116.

(6) *Title of Wife to reversionary share—Form No.* 4, *p.* 114.

(7) *Agreement for Settlement—Form No.* 11, *p.* 119.

(8) IT was also agreed that the Wife and the said J. B. and H. D. should respectively enter into the covenants (*i*) by them hereinafter contained:

(*h*) The mortgage debt and registered charge should in this settlement be treated as investments and only referred to in the first schedule, see Precs. VIII, p. 187, and IX, p. 189, *supra*, for transfers thereof.

(*i*) *I.e.*, for settlement of after-acquired property and payment of the principal and annual sums.

Commencement of operative parts—Form No. 12, *p.* 119.

Operative parts.

1. *Declaration of trusts of investments until marriage for Husband—Form No.* 13, *p.* 119.

Assignments and declaration of trusts unt marriage.

2. *Assignment of portion by Husband—Forms Nos.* 18 *and* 19, *p.* 121.

3. *Covenant by Husband's Father to pay principal sum—Form No.* 23, *p.* 123.

4. *Assignment of reversionary share by Wife—Forms Nos.* 14, 15 *and* 19, *pp.* 120–21.

5. *Trusts after marriage of all settled property, to invest and vary—Adapt Form No.* 28, *p.* 127.

Trusts after marriage.

6. *Definitions of the "Husband's Trust Fund" and the "Wife's Trust Fund," and trusts thereof—Form No.* 31, *p.* 128.

(1) and (2) *Successive life interests to Husband and Wife in both Funds—Form No.* 32, *p.* 129.

Or

Where discretionary trusts are to be imposed at once on Husband's Trust Fund after giving successive life interests in Wife's Fund to her and the Husband—Form No. 34 *or* 34A, *pp.* 131–32.

Or

Where Husband to be given a protected life interest (*j*) *in his Fund, and the Wife is given a reversionary life interest in his Fund—Form No.* 34B *or* 34C, *pp.* 132–33.

Or

Where Husband is to be given a protected life interest in the Wife's Trust Fund—Form No. 33 *or* 33A, *pp.* 129, 131.

[*Provision as to income of Husband where there is a discretionary trust—Form No.* 60A, *p.* 162.]

(3) and (4) *After death of Husband and Wife for issue as they jointly or the survivor appoint—In default for children—Hotchpot clause—Form No.* 37, *p.* 134.

(5) *If a son who becomes entitled to certain settled estates is to be excluded from taking in default of appointment, use the words "other than and except such son as hereinafter mentioned and excepted" in gift in default of appointment contained in Form No.* 37, *p.* 135, *and add Form No.* 38, *p.* 136.

7. *Advancement statutory power—Form No.* 39A, *p.* 137.

(*j*) This trust, in the event of the husband's bankruptcy, will only be good as regards the sum covenanted to be paid by his father; hence Form No. 34 or 34A gives a greater protection.

8. *Trusts in default of children in respect to both Funds—Form No.* 41, *p.* 137.

9. (1) *Provisions as to land conveyed on trust for sale by deed of even date. Application of rents until sale—Form No.* 52 (1), *p.* 155.

(2) *Power to raise money, &c.—Form No.* 52 (2), *p.* 156.

10. *Investment clause and ancillary clauses—Form No.* 51, *p.* 152, *omitting power to purchase land only if the fuller power, Form No.* 53, *p.* 156, *is used.*

11. *Power to invest in the purchase of land in U.K. and in Colonies—Form No.* 53, *p.* 156.

12. *Additional powers as respects land—Form No.* 56, *p.* 159.

13. *Power if desired for Trustees to accept conveyance of land held upon trust for sale—Form No.* 57, p. 160, *if any part of the reversionary interest consists of a share in the proceeds of sale of land.*

14 and 15. *Assignment of policy by Husband and declaration of trusts by reference to Husband's Trust Fund; also covenants by Husband to keep up policy, &c.—Forms Nos.* 24 *and* 49, *pp.* 124, 148.

16. *Covenant by Wife to settle her after-acquired property and declaration of trusts by reference to Wife's Trust Fund—Form No.* 48, *p.* 144.

17. *Covenant by Wife's Father to pay annual sum—Form No.* 50, *p.* 151.

18. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 162, *including sub-clause* (1).

19. *Power for Trustees to allow existing investments held on trusts of the Settlement, under which the reversionary share is derived, to remain—Form No.* 63, *p.* 164.

20. *Additional power to delegate—Form No.* 65, *p.* 165.

21. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

22. *Power for professional trustees to charge—Form No.* 66, *p.* 165.

23. *Provision for examination of trust accounts, if desired—Form No.* 67, *p.* 165.

24. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

25. *Marginal notes—Form No.* 73, p. 168.

IN WITNESS, &c.

(THE FIRST AND SECOND SCHEDULES, *as in last Precedent.*)

No. XII.

SETTLEMENT *by a* WIDOW *on her* RE-MARRIAGE *in exercise of* POWER *in a* FORMER SETTLEMENT.(*k*)

Parties.

THIS APPOINTMENT is made, &c. (*date*), BETWEEN C. B., of, &c., Widow (hereinafter called the Wife), of the 1st part, X. Y., of, &c. (hereinafter called the Husband), of the 2nd part, and E. F., of, &c., G. H., of, &c., and L. K., of, &c. (*the existing Trustees of the recited Settlement*) (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Settlement on first marriage.

(1) By a Deed (hereinafter called the Settlement), dated, &c., and made, &c. (being the Settlement made in consideration of the marriage, shortly afterwards solemnised between the Wife (then C. D., Spinster), and her deceased husband A. B., whereof the Trustees are the present trustees), it was agreed that the trustees for the time being of the Settlement should, after the death of such one of them, the said A. B. and the Wife, as should first die, pay the income of the Trust Funds thereby settled (and which are therein and hereinafter called the Husband's Trust Fund and the Wife's Trust Fund respectively) to the survivor of them during his or her life, and should, after the death of such survivor, hold the capital and income of both funds IN TRUST for all or such one or more exclusively of the other or others of the children and remoter issue of the then intended marriage as the said A. B. and the Wife or the survivor of them should in manner therein mentioned appoint, and in default of any such appointment IN TRUST for all or any the children or child of the then intended marriage who should attain the age of twenty-one years, or being female should marry under that age, and if more than one in equal shares, with an ultimate trust if the Wife survived the said A. B. and in default of issue of the then intended marriage taking vested interests as regards the Wife's Trust Fund for the Wife absolutely: And it was also provided that, &c. (*set out fully power for intended Wife in respect to the Wife's Trust Fund to appoint to future Husband and to issue of future marriage, see Form No.* 46, *p.* 140):

Death of first husband leaving children.

(2) The said A. B. died on the —— day of ——, 19—, leaving the Wife his widow and having had four children and no more by

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Failure of issue.

(*k*) If there are no issue of the first marriage capable of taking and no child has attained a vested interest, then the wife can under the ultimate trusts call for a transfer of her fund; in this case no reference will be made to the former settlement unless it is necessary to declare that her life interest in her former husband's fund is to be without power of anticipation.

her (namely) —— (*state names of children*), all of whom are infants and unmarried [and no appointment has ever been made to such children] :(*l*)

Present state of Trust Funds.

(3) The Husband's Trust Fund is now represented by the investments and property mentioned in the First Schedule hereto and the Wife's Trust Fund is now represented by the investments and property mentioned in the Second Schedule hereto :

Agreement for intended marriage and for Settlement.

(4) A marriage has been agreed upon and is intended to be solemnised between the Husband and Wife : And upon the treaty for the said intended marriage it was agreed that such Settlement and Appointment should be executed as hereinafter contained :

Operative part.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, and in exercise of all powers for the following purposes conferred by the Settlement, THIS DEED WITNESSETH and it is hereby declared as follows :—

Income to Wife without power of anticipation.

1. THE trustees or trustee for the time being of the Settlement (hereinafter included in the expression the Trustees) shall stand possessed of the income of the Husband's Trust Fund and of the Wife's Trust Fund UPON TRUST to pay the same to the Wife for the residue of her life, without power of anticipation during any coverture.

Partial revocation of the trusts of the Wife's Trust Fund.

2. THE Wife hereby revokes such of the trusts, powers and provisions of the Settlement declared concerning the Wife's Trust Fund as may be necessary to give effect to the appointments hereinafter contained.

Exercise of powers of appointment in favour of Husband and issue of the second marriage to the full extent.

3. THE Wife hereby appoints that after her death the Trustees shall, if there shall be but one child and no more of the Wife by her first marriage who attains the age of twenty-one years, or being female marries under that age, stand possessed of two third shares of the Wife's Trust Fund, or if there shall be two or more of such children, then of one-half of the Wife's Trust Fund,(*m*) Upon the trusts and subject to the powers and provisions following (namely) :—

Husband for life.

(1) UPON TRUST to pay the income of the shares and premises hereinbefore appointed to the Husband if he survives the Wife during the residue of his life :

Issue of intended marriage as appointed, in default to children.

(2) AFTER the death of the survivor of the Husband and Wife the capital and income of the premises shall be held

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(*l*) Probably the powers do not authorise an appointment to infants or unmarried children.

(*m*) It is assumed that this is the limit of the power, see Form No. 46, p. 140.

IN TRUST (*for issue as Husband and Wife or survivor appoint, and in default to children, and hotchpot clause, Form No.* 37, *p.* 134, *saying* "the appointed shares and premises" *instead of* "the Trust Fund"):

(3) (*Advancement clause—Form No.* 39 *or* 39A, *pp.* 136–37. *See that this corresponds with the advancement clause in the principal Settlement*):

Subject to the appointment the property to revert.

(4) SUBJECT to the trusts, powers and provisions hereof the parts of the Wife's Trust Fund to which the foregoing revocation and appointment relates, or so much thereof respectively as shall not have become vested or been applied under any of such trusts, powers or provisions, shall devolve under the Settlement as if no revocation or appointment had been hereby made:

Child not to take larger share than if Fund had been divided equally between children of every marriage.

(5) PROVIDED that an only child or any two or more children and any issue of a child or children collectively of the now intended marriage shall not under the foregoing appointment or any exercise of the powers hereinbefore contained become entitled to a larger share of the Wife's Trust Fund than such only child or such children collectively would have taken in case the Wife's Trust Fund had been equally divided between all the children of the Wife by every marriage who attain the age of twenty-one years, or being female marry under that age:

Power of appointment preserved in case of future marriage.

(6) SUBJECT and without prejudice to the foregoing appointment and to any exercise of the powers hereinbefore contained, the powers of revocation and appointment contained in the Settlement may, in accordance with the provisions thereof, be exercised so often as the Wife shall marry:

Saving of powers as regards the shares not appointed.

(7) NOTHING herein contained shall affect prejudicially the powers of appointment and advancement for the benefit of the children and other issue of the Wife by her first marriage contained in the Settlement so far as such powers relate to the parts of the Wife's Trust Fund not included in the foregoing appointment:

Trustees' powers to remain in force.

(8) THE powers of investment, management and other powers and indemnities conferred on the Trustees by the Settlement or by law shall remain in force and apply to the shares and premises hereby appointed in like manner as if the trusts and powers hereof had been declared by the Settlement:

Settlement of balance of Wife's Trust Fund on failure of the trusts of the principal Settlement.

4. IF there shall be no child of the first marriage of the Wife who attains a vested interest under the trust in default of appointment declared by the Settlement, then, subject to the trusts and powers therein contained for the benefit of the

issue of the first marriage of the Wife, the entirety of the Wife's Trust Fund and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same, shall after the death of the Wife and such failure of children of the first marriage as aforesaid be held (*n*) Upon the trusts and subject to the powers (including the power of advancement) and provisions hereinbefore expressly or by reference to the Settlement declared concerning the shares and premises hereinbefore appointed, and so as to form one fund therewith for all purposes, including the hotchpot provision.

Ultimate trusts.

5. If there shall not be any child of the first marriage of the Wife or of the said intended marriage who attains a vested interest under the respective trusts in default of appointment contained in the Settlement and this deed, then, subject to the trusts and powers respectively contained in the Settlement and this Deed, the Wife's Trust Fund and the income, &c. (*continue Form No.* 41, *p.* 137, *last sub-clause thereof. As the Wife has become absolutely entitled in reversion subject to the trusts for issue she can declare this trust to protect herself*).

Settlement to be void if marriage not solemnised.

6. Provided that if the said intended marriage shall not be solemnised within six months from the date hereof, this deed shall be void.(*o*)

In witness, &c.

(*Add two Schedules.*)

No. XIII.

SETTLEMENT *under the* INFANT SETTLEMENTS ACT, 1855, *of the* WIFE'S SHARE *of a* RESIDUARY ESTATE *being administered by the* COURT. TRUSTS *for the* WIFE *and* HUSBAND *successively for Life and then for their Issue. Power to Raise Money for Wife's Outfit, and to Pay Costs, &c.*(*p*) (*Equitable Interests.*)

Parties.

THIS SETTLEMENT is made, &c., Between A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c., Spinster (hereinafter called the Wife), the eldest daughter of the

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(*n*) If a child of the first marriage has attained a vested interest, then this clause (No. 4) should be omitted.

(*o*) The appointment cannot be made unless there is a remarriage; hence if clause 4 is omitted this proviso may also be omitted.

(*p*) For notes on settlements by infants, see notes to Form No. 10, p. 117, *supra*.

late E. D., deceased, and now an infant of the age of twenty years or upwards, of the 2nd part, and X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS :—

Agreement for marriage.

(1) A marriage has been agreed upon and is intended to be solemnised between the Husband and Wife, with the consent of —— and ——, her testamentary guardians appointed by the Will of her father, the said E. D.:

(2) (*Recite title of Wife to a moiety of residuary estate under her father's Will, Form No.* 5, *p.* 115, *omitting words relating to prior life interests*):

Action for administration of estate of testator.

(3) In the year 19— an action *Re D., D.* v. *M.*, 19—, D., No. —, was instituted in the Chancery Division of the High Court of Justice for the administration of the said testator's real and personal estate, in which action L. D., the eldest son of the said testator and an infant, by, &c., his next friend, was plaintiff, and the said —— and —— (*trustees and executors of the Will*)(q) were defendants:

Order and service thereof on Wife.

(4) The usual Order for administration was made in the said action on, &c., and the Wife has been served with notice thereof and has become bound by the proceedings in the said action:

Master's certificate.

(5) The Master has made his certificate in the said action dated, &c., and filed on, &c., in which certificate and the schedules thereto the particulars of the said testator's real estate and the liabilities affecting the same are set forth, and by which certificate it appears that the whole of the testator's personal estate (except chattels real) has been applied in discharge of liabilities affecting the same:

(6), (7) and (8) (*Recite Assent by the executors as respects the real estate and chattels real passing to themselves on trust for sale; Order under Infant Settlements Act*, 1855, *and approval of Settlement by the Judge, Form No.* 10, *p.* 117):

Operative part.

NOW, in obedience to the recited Order and in consideration of the said intended marriage, THIS DEED WITNESSETH, and it is hereby declared as follows :—

Assignment by Wife of share in residuary estate.

1. THE Wife, with the approbation of the Husband, hereby assigns unto the Trustees,(r)

Moiety in estate of testator;

ALL THAT the moiety to which the Wife is now or will, upon the solemnisation of the said marriage, become entitled as and all arrears of income due so as to be capitalised.

(q) They will have been mentioned in the recital, Form No. 5, p. 115.

(r) The Court can, under the Infant Settlements Act, 1855, authorise the infant to assign, but, it is conceived, cannot enable her to give a mere personal covenant; therefore she should not assign "As Settlor."

aforesaid of the net residue of the money to arise from the sale and conversion of the freehold and leasehold estates of the said testator and of the testator's residuary personal estate (if any):

AND ALSO all arrears and accumulations of income which on the day of the solemnisation of the said marriage shall be due to the Wife in respect of the premises hereby assigned, and so that such arrears and accumulations of income shall, as from the day of the said marriage, merge in and be added to and considered as part of the capital of the premises hereby assigned,

Habendum.

TO HAVE AND RECEIVE the premises unto (*continue as in Form No.* 19, *p.* 121).

Trusts after marriage.

2. THE Wife, with the approbation of the Husband, hereby directs, and the Trustees hereby agree with the other parties hereto, that the Trustees shall and will, after the solemnisation of the said intended marriage, stand possessed of the said share, arrears and accumulations of income and premises hereinbefore assigned Upon the trusts following (that is to say):—

Trust to invest and vary.

UPON TRUST that the Trustees (*continue as in Form No.* 28, *p.* 127, *with the necessary omissions, saying* "the said share, arrears and accumulations of income and premises hereby assigned," *and adding after the word* "life" *the words* "and so that the consent of the Wife may be effectual notwithstanding her infancy "(*s*)).

Definition of "Trust Fund" and trusts.

3. *Definition of "the Trust Fund" and trusts thereof—Form No.* 29, *p.* 128.

(1) to (4) *Trusts for Wife for life, then for Husband for life, and after death of both for issue, as Husband and Wife jointly or the survivor appoint—In default for children—Hotchpot clause—Forms Nos.* 30, *p.* 128 (*reversing the order of the life interests*), *and* 37, *p.* 134.

4. *Advancement statutory power—Form No.* 39A, *p.* 137.

5. *Trust in default of children for Wife—Form No.* 41, *p.* 137, *omitting sub-clause* (1).

Direction to raise money for the outfit of Wife.

6. NOTWITHSTANDING the trusts hereinbefore declared, the Trustees shall, after the solemnisation of the said marriage, out of the Trust Fund, raise the following sums and apply or pay the same as hereinafter mentioned (that is to say):—

Consent by infant to investment.

(*s*) As to the power of an infant to consent to changes in investments, see *Re Cardross* (1878), 7 Ch. D. 728; 47 L. J. Ch. 327; *Re D'Angibau* (1880), 15 Ch. D. 228; 49 L. J. Ch. 756; *Re D. of Newcastle* (1883), 24 Ch. D., at p. 136; 52 L. J. Ch. 645; *Re Sutton* [1921], 1 Ch. 257; 90 L. J. Ch. 71.

(1) First, the Trustees shall and they are hereby required to raise a sum of £—— and to pay the same to the aforesaid guardians of the Wife or the survivor of them, to be by them or him applied in discharging the cost of the outfit of the Wife preparatory to her marriage, and all liabilities connected therewith, and the surplus (if any) of the said sum of £——, after answering the purposes aforesaid, shall be paid by the said guardians or guardian to the Wife, but the receipt of the said guardians or guardian shall be a complete discharge to the Trustees for the said sum of £—— :

To pay costs.

(2) Secondly, the Trustees shall and they are hereby required to raise such sum as they shall deem proper for the purpose of discharging the costs and expenses properly incurred of all parties of and incidental to the preparation, execution and completion of this Settlement,(*t*) and of and incidental to all proceedings in the said action *Re D., D.* v. *M.*, with reference to the said marriage, and a memorandum in writing endorsed hereon and signed by the Trustees as to the amount of all such costs and expenses shall be conclusive that the amount mentioned in such memorandum is the proper amount and shall be binding on all persons claiming hereunder; And the amount so to be raised as aforesaid shall be applied by the Trustees in discharge of the costs and expenses aforesaid.

Statement in writing as to amount to be conclusive.

7. *Agreement by Wife to settle after-acquired property—Form No.* 48, *p.* 144.

8. *Power for Wife to re-settle on future marriage—Form No.* 46, *p.* 140.

9. *Investment clause and ancillary clauses—Form No.* 51, *p.* 152, *including power to purchase land.*

10. *Additional powers—Form No.* 56, *p.* 159 (*as the circumstances require*).

11. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 163, *omitting sub-clause* (1).

12. *Power to appoint new Trustees—Form No.* 68, *p.* 166.(*u*)

In witness, &c.

(*t*) See note to Form No. 64, p. 164.

(*u*) A special case must be made out before the court will permit the insertion of a power for professional trustee to charge in this case.

Settlement on behalf of lunatic.

No Precedent of a settlement on behalf of a lunatic under L. P. Act, 1925, s. 171, is given, as the circumstances in each case will be special, but either the Forms relating to Settlements Personal or to Settlements Real can be adapted.

No. XIV.

SETTLEMENT *of* REVERSIONARY PROPERTY *and* INVESTMENTS, *the intended* WIFE *being an* INFANT,(*v*) *without an* ORDER *of the* COURT.

Parties.

THIS SETTLEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c., an infant of the age of —— years or thereabouts (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., and L. K., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Recitals.

(1) *Agreement for marriage—Form No.* 2, *p.* 113.
(2) *Transfer of investments by Husband—Form No.* 3, *p.* 114.
(3) *Title of Wife to reversionary share—Form No.* 4, *p.* 114.
(4) *Agreement for Settlement—Form No.* 11, *p.* 119.

Operative part.

Commencement of operative part—Form No. 12, *p.* 119.

1. *Declaration of trusts of investments until marriage for Husband—Form No.* 13, *p.* 119, *referring to First Schedule.*

Agreement that Wife's reversionary share in Trust Funds shall be vested in Trustees.

2. (1) THE —— share to which the Wife will upon her marriage become entitled in reversion expectant as aforesaid in the investments and property mentioned in the Second Schedule hereto, and in all other (if any) the money, investments and property now subject or which may hereafter become subject to the trusts of the Settlement of 19—, shall, if and when the same shall fall into possession, be assigned or paid by the Husband and Wife,

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Effect of the Husband's covenant to settle the Wife's property when she is an infant.

(*v*) When the intended wife is an infant, she is incapable of making a settlement binding on herself, except with the leave of the court under the Infant Settlements Act, 1855. But it is sometimes desired to avoid the expense and delay of an application to the court, and it was therefore usual, before the passing of the M. W. P. Act, 1882, where the infant's property was personalty in possession or in reversion, to rely on the husband's covenant to settle it. Such a covenant was effectual as regards personal estate, except in the event of the property not falling into possession during the coverture and the wife being the survivor.

Before the M. W. P. Act, 1907, a settlement by an intended husband and infant wife of the wife's property bound it, having regard to s. 19 of the M. W. P. Act, 1882, to the same extent as under the old law; hence, the wife could not repudiate a settlement so effected after she attained full age. *Stevens* v. *Trevor-Garrick* [1893], 2 Ch. 307; 62 L. J. Ch. 660; *Buckland* v. *B.* [1900], 2 Ch. 534; 69 L. J. Ch. 648.

The M. W. P. Act, 1907, s. 2 (1), was intended to meet this point, and provides that unless the settlement is confirmed by her on attaining full age it shall not be valid except as mentioned in sub-s. 2.

The husband's covenant would bind interests to which he may become entitled under Ad. of E. Act, 1925, s. 46, or L. P. Act, 1925, s. 130. The wife has power to give receipts for income and for statutory accumulations after she marries: *ib.*, s. 21.

and all other necessary parties, unto or otherwise vested in the Trustees IN TRUST for the Wife until the said intended marriage, and after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same :

Assignment by the Husband of his interest if the Wife dies an infant.

(2) THE Husband, As Settlor, hereby assigns unto the Trustees,

ALL the interest in the said share and premises which, under section two of the Married Women's Property Act, 1907, or section forty-six of the Administration of Estates Act, 1925, or otherwise, he may have power to dispose of,

TO HAVE AND RECEIVE the same unto the Trustees, Upon the trusts hereby declared concerning the said share and premises :

(3) (*Add if desired, power for Trustees to accept specific property in respect of reversionary share—sub-clause* (4) *of Form No.* 23, *p.* 124.)

3. *Trusts after marriage of investments and reversionary share, to invest and vary—Form No.* 28, *p.* 127.

4. *Definition of the "Husband's Trust Fund" and the "Wife's Trust Fund" and trusts thereof—Form No.* 31, *p.* 128.

(1) and (2) *Successive life interests to Husband and Wife in both Funds—Form No.* 32, *p.* 129.

(3) and (4) *After death of Husband and Wife for issue, as they jointly or the survivor appoint—In default for children—Hotchpot clause—Form No.* 37, *p.* 134.

5. *Advancement, statutory power—Form No.* 39A, *p.* 137.

6. *Trusts in default of children in respect of both Funds—Form No.* 41, *p.* 137.

7. *Power for Wife to make Settlement on future marriage—Form No.* 46, *p.* 140.

8. *Investment clause and ancillary clauses—Form No.* 51, *p.* 152.

9. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 162.

10. *Power for Trustees to allow investments held on trusts of Settlement, under which the reversionary share is derived, to remain —Form No.* 63, *p.* 164.

11. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

12. *Power for professional trustees to charge—Form No.* 66, *p.* 165.

13. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

Settlement to be confirmed by

14. (1) PROVIDED that the Wife shall, after she attains full age, upon the request in writing of the Husband or of the

Wife on attaining full age.

Trustees, execute at the cost of the trust estate such assignment of the one —— share and premises hereinbefore agreed to be assigned as will, in the opinion of the Trustees, be sufficient for giving effect to the Settlement intended to be hereby made, and for confirming this deed, and in case the Wife shall neglect to comply with such request for six months after receiving the same, then and in such case the trusts for payment of the annual income of the Husband's Trust Fund to the Wife, if she survives the Husband, shall become void as if she had died in his lifetime, and the power of appointment conferred on her either jointly with the Husband or solely as survivor shall, as regards the Husband's Trust Fund, cease to be exercisable by her, and shall become exercisable by the Husband, either by deed or Will as if he had survived the Wife, and her consent to any investment of or to the exercise of the statutory power of advancement or otherwise in respect of the Husband's Trust Fund shall not be required:

Covenant by Husband to confirm Settlement.

(2) THE Husband hereby covenants with the Trustees that he will as soon as the Wife attains full age use his best endeavours to obtain the confirmation by her of this deed, and further that he will, if required, take out administration to the estate of the Wife, and from time to time do and execute all such acts and deeds as the Trustees may consider necessary or proper for the purpose of giving effect to the settlement intended to be hereby made.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of investments transferred by the Husband.

THE SECOND SCHEDULE.

Particulars of investments subject to the trusts of the Settlement of 19—.

No. XV.

DEED *of* CONFIRMATION *of a* SETTLEMENT *when an* INFANT WIFE *attains Full Age.*(w)

Parties.

THIS FURTHER ASSURANCE is made, &c. (*same parties*

(w) It is usual for this deed to be prepared at the same time as the settlement. It may be by endorsement, if desired. Where there is nothing to assign, *e.g.*, where investments are settled, the wife should simply confirm the settlement. The investments will be separately transferred by her. And see notes to last Precedent as to the necessity of confirming the settlement.

as last Precedent, except that C. D. will now be C. B., the Wife of A. B.): WHEREAS :—

(1) This Deed is supplemental to a Settlement (hereinafter called the Principal Deed), dated, &c., and made between the same parties as are parties hereto (being a Settlement executed in consideration of the marriage, shortly afterwards solemnised, between the Husband and Wife) :

Settlement.

(2) THE Wife attained the age of twenty-one years on the —— day of —— last, and the Trustees have (as testified by their execution hereof) requested the Wife, for the purpose of confirming the Principal Deed, to execute such assignment as is hereinafter contained :

That Wife has attained full age, and that the Trustees have requested assignment to be made.

NOW THIS DEED WITNESSETH that, for the purpose of confirming the Principal Deed, the Wife, As Settlor, and with the approbation of the Husband, hereby assigns unto the Trustees :

Confirmatory assignment of the share in the reversionary interest.

ALL THAT the —— share to which the Wife is entitled in reversion as mentioned in the Principal Deed in the investments and property mentioned in the Second Schedule thereto, and in all other (if any) the money, investments and property now subject or which may hereafter become subject to the trusts of the Settlement of 19— mentioned in the Principal Deed :

TO HAVE AND RECEIVE the same unto the Trustees absolutely, Upon the trusts and subject to the powers and provisions by the Principal Deed declared concerning the same.

IN WITNESS, &c.(*x*)

(*x*) In former editions a Precedent was inserted here giving successive life interests in land to the husband and wife, with remainder to the trustees on trust for sale, the proceeds to be held on trusts for the issue of the marriage. This hybrid form of settlement was never recommended ; it was sometimes adopted with a view to making the husband and wife masters of the situation during their lives. This can be effected by extending the powers of delegation conferred by L. P. Act, 1925, s. 29, to all the statutory powers (see Form No. 56 (4), p. 160, *supra*). They are bound to delegate when so requested : *ib.*, s. 30. In this edition the Precedent has been omitted, for it would involve a vesting deed in favour of the first tenant for life and a trust deed to comply with S. L. Act, 1925, s. 4. On the death of the first tenant for life, the settled land would devolve on the S. L. Act trustees as his special personal representatives ; they would, by a vesting assent, if so required, vest the land in the second tenant for life, and on his or her death they would, in writing, assent to the land vesting in themselves on trust for sale. This scheme is not recommended when the same result can be achieved by an immediate trust for sale. The effect of a future trust for sale is to create S. L. Act trustees : S. L. Act, 1925, s. 30 (1) (iv).

Life interests followed by future trust for sale.

Effect of future trust for sale.

No. XVI.

CONVEYANCE *by the intended* HUSBAND *of an* INTEREST IN REMAINDER *of* FREEHOLDS [*or an* UNDIVIDED SHARE *in the proceeds of sale thereof*] *to* TRUSTEES *on* TRUST *for* SALE AFTER *the determination of the* PRIOR LIFE INTEREST. *The* PROCEEDS *to be held upon the* TRUSTS *of a* DEED *of* EVEN DATE.(*y*) (*Equitable Interest.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c. (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., and L. K., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS :—

Title of Husband to interest in remainder.

(1) and (2) (*Recite Will of X. Y., under which the Husband is entitled to an interest in remainder in freeholds expectant on the life estate of R. B., his father, and the Vesting Instrument made in favour of R. B., and stating who are the S. L. Act trustees*) :

Agreement for marriage, &c.

(3) (*Agreement for marriage, Form No. 2, p.* 113) :

Interests in remainder.

Undivided shares.

(*y*) All interests in remainder are equitable interests : L. P. Act, 1925, s. 1. If the settlor has only an undivided share, the entirety of the land will, on the death of the tenant for life, vest in the special representatives of the latter when constituted (who will generally be the S. L. Act trustees), on trust (subject to duties, &c., being provided for) to assent to the land vesting in the S. L. Act trustees on trust for sale : S. L. Act, 1925, s. 36 ; thus a remainderman can only convey his share in the proceeds of sale, not in the land itself. In the case of an undivided share, there is no reason why the conveyance of the settlor's interest in the proceeds of sale should not be inserted in the personalty settlement without using a separate deed.

Notice to S. L. Act trustees.

Minor Interests Index.

Notice in writing of the conveyance of the interest in remainder must be given to the S. L. Act trustees : L. P. Act, 1925, s. 137 ; if the title to the land is registered under L. R. Act, 1925, then under s. 102 (2) of that Act (see also L. R. Rules, 1925, rr. 11, 229) a priority inhibition must be lodged in the Minor Interests Index ; this does not affect the powers of the tenant for life who is registered as proprietor.

Trust for sale terminates a realty settlement.

Where a trust corporation should be appointed a trustee for sale.

Where a legal estate becomes subject to a trust for sale, the land ceases to be "settled land" : L. P. (Amend.) Act, 1926, Sch., amending ss. 1 and 3 of the S. L. Act, 1925. Where the land becomes vested in the former S. L. Act trustees on trust for sale they have the same over-reaching powers as the former tenant for life : *ib.*, amending L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3), bringing this paragraph into line with S. L. Act, 1925, s. 36 (2). They also have any additional powers conferred by the settlement : *ib.*, amending L. P. Act, 1925, s. 28 (1). On the other hand, where the trust for sale is created by the owner of the land, then, in order that the trustees for sale should have power to over-reach equitable interests (*e.g.*, a jointure) subsisting under a former settlement, then either a trust corporation should be appointed a trustee or the trustees must be approved by the court : L. P. Act, 1925, s. 2 (2), as amended by L. P. (Amend.) Act, 1926, Sch.

(4) (*Agreement for Settlement, Form No.* 11, *p.* 119) *:* NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH and it is hereby declared as follows :— Witnessing part.

1. THE Husband, As Settlor, with the privity of the Wife, hereby conveys unto the Trustees, Conveyance

ALL, &c. (*parcels, referring to schedule. If the Settlor only has an undivided share in the interest in remainder, the following words should be prefixed to the parcels* "ALL THAT the —— undivided —— share of the Husband in, &c., or in the proceeds of sale thereof." *In this case, the conveyance can be properly inserted in the Personalty Settlement for, on the death of the tenant for life, the entirety of the land will be vested in the S. L. Act Trustees on trust for sale : S. L. Act,* 1925, s. 36.)

TO HOLD (subject to the life interest therein of the said R. B.) unto the Trustees in fee simple IN TRUST for the Husband in fee simple, until the said intended marriage shall be solemnised : And after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

2. THE Trustees shall, after the solemnisation of the said intended marriage with the consent in writing of the Husband and Wife during their joint lives and of the survivor of them during his or her life, and after the death of the survivor at the discretion of the Trustees, sell the premises hereby conveyed at any time after the death or cesser (*z*) of the life interest Trust for sale.

(*z*) Under S. L. Act, 1925, s. 105 (as amended by L. P. (Amend.) Act, 1926, Sched.), if the tenant for life surrenders his life interest "to the person next entitled in remainder or reversion under the settlement" so as to extinguish it, his statutory powers cease. It is conceived that the trustees for sale being absolute assignees of the remainderman would be "next entitled . . . under the settlement" within the section. At any rate the settlement comes to an end by reason of the trust for sale, hence, on a surrender, the trustees for sale, having become entitled free from the limitations of the settlement, can call for a conveyance under *ib.*, s. 7 (5). Similarly, if the trustees have been approved by the court or a trust corporation is acting as trustee for sale so that any subsisting family charge could be over-reached by them, they can call for a conveyance; *semble,* they could do so before the trustees were approved, for the approval can be obtained at any time before they make title. Under s. 105, after the surrender, the statutory powers become exercisable as if the surrenderor were dead; the trustees for sale have the statutory powers under L. P. Act, 1925, s. 28. Trustees for sale have to give effect to equitable interests of which they have notice, "whether created *before* or after the disposition upon trust for sale" : *ib.*, s. 3 (1) (b). Effect of surrender of life interest to remainderman, or his absolute assignees. Beneficial interests.

Notice in writing of the conveyance of the estate in remainder must be given to the S. L. Act trustees of the Will: L. P. Act, 1925, s. 137. Notice to S. L. Act trustees.

of the said R. B., with power to postpone any such sale as the Trustees shall think fit, and shall stand possessed of the net money to arise from the sale of the premises (after payment of the costs and expenses attending such sale) and of any other capital money arising under their statutory powers, and of the rents, profits and income of the premises after the death of the said R. B., or the cesser of his life interest and until the sale of the premises Upon the trusts and subject to the powers and provisions declared concerning the same by a Settlement already prepared, and intended to bear even date herewith, and to be made between the same parties as are parties hereto and in the same order.

As to capital money arising under the Will.

3. ALL capital money arising under the said Will or investments representing the same received by the Trustees from the trustees for the time being of the said Will in respect of the premises hereby conveyed shall be held Upon the same trusts as if the same had arisen under the trust for sale aforesaid.

4. *Additional powers—Form No.* 56, *p.* 159.

5. *If a trust corporation, not being the Public Trustee, is appointed, add its special form authorising remuneration to be charged, see Form No.* 69, *p.* 166.

6. *Power to appoint new trustees—Form No.* 68, *p.* 166.

IN WITNESS, &c. (*Add Schedule.*)

No. XVII.

SETTLEMENT *by the intended* HUSBAND *of the* PROCEEDS *of Sale of an Estate in* REMAINDER *of* FREEHOLDS *conveyed to* TRUSTEES *on* TRUST *for* SALE *by Deed of even Date, and by the intended* WIFE *of a* PORTION CHARGED *on* REAL ESTATE. (*Equitable Interests.*)

Parties.

THIS SETTLEMENT is made, &c. (*same parties as last Precedent*): WHEREAS :—

(1) *Agreement for marriage—Form No.* 2, *p.* 113.

Conveyance of even date by Husband of estate in remainder of freeholds upon trust for sale.

(2) BY a Conveyance bearing even date herewith and made between the same persons as are parties hereto and in the same order, the Husband conveyed his estate in fee simple in remainder in certain freehold properties therein mentioned unto the Trustees in fee simple, subject to the interest for life therein of R. B. (the father of the Husband) In trust for the Husband in fee simple until the solemnisation of the said intended marriage, and thereafter UPON TRUST that the Trustees should, after the

solemnisation of the said intended marriage, sell the premises at any time after the death of the said R. B. or the cesser of his life interest and stand possessed of the net money to arise from any such sale after payment of costs and of any other capital money arising under the statutory powers and also of the rents and profits of the premises until sale Upon the trusts declared concerning the same by a Settlement of even date therein referred to (meaning this deed).

(3) *Title of Wife to a portion under a Will—Form No.* 6, *p.* 115.

(4) *Agreement for Settlement—Form No.* 11, *p.* 119.

Operative part.

Commencement of operative part—Form No. 12, *p.* 119.

1. *Assignment by Wife of portion—Forms Nos.* 18 *and* 19, *p.* 121.

2. *Trusts after marriage of proceeds of sale of the estate in remainder conveyed by deed of even date and portion, to invest and vary—Form No.* 28, *p.* 127.

3. *Definition of the "Husband's Trust Fund" and the "Wife's Trust Fund" and trusts thereof—Form No.* 31, *p.* 128.

(1) and (2) *Successive life interests to Husband and Wife in both Funds—Form No.* 32, *p.* 129.

(3) and (4) *After death of Husband and Wife, for issue as they jointly or the survivor appoint—In default for children—Hotchpot clause—Form No.* 37, *p.* 134.

4. *Advancement statutory powers—Form No.* 39A, *p.* 137.

5. *Trusts in default of children in respect of both Funds—Form No.* 41, *p.* 137.

6. *Provisions as to land conveyed on trust for sale by deed of even date—Application of rents after the cesser of the life estate of R. B. until sale—Adapt Form No.* 52, *p.* 155.

7. *Investment clause—Form No.* 51, *including power to purchase land, p.* 152.

8. *Additional powers—Form No.* 56, *p.* 159.

9. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 162.

10. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

11. *Power for professional trustees to charge—Form No.* 66, *p.* 165.

[*Add, if a trust corporation, not being the Public Trustee, is appointed to act, its special power to charge for its services, see Form No.* 69, *p.* 166.]

12. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

IN WITNESS, &c.

No. XVIII.

SETTLEMENT *by intended* WIFE *of a* REVERSIONARY SHARE *in the* PROCEEDS *of* RESIDUARY REAL *and* PERSONAL ESTATE *held on* TRUST *for* SALE *under her* FATHER'S WILL.(a) (*Equitable Interests.*)

Parties.

THIS SETTLEMENT is made, &c. (*parties same as in Prec.* XVI, *p.* 206): WHEREAS:—

Recitals.

(1) *Agreement for marriage—Form No.* 2, *p.* 113.

(2) *Title of Wife to share of residuary estate under her father's Will—Form No.* 5, *p.* 115, *saying* "as one of the —— children of the testator is entitled expectant on the death of her mother, Jane D., and in the meantime subject to her life interest."

(3) *Agreement to settle—Form No.* 11, *p.* 119.

Operative part.

Commencement of operative part—Form No. 12, *p.* 119.

1. *Assignment by Wife of her reversionary share under the Will —Forms Nos.* 14, 16, *and* 19, *pp.* 120–21, *and if desired subclause* (4) *of Form No.* 23, *p.* 124.

2. *Trusts after marriage, to invest and vary—Form No.* 27, *p.* 127.

3. *Definition of the Trust Fund and trusts thereof—Form No.* 29, *p.* 128.

(1) *Trusts for Wife and Husband successively for life—Form No.* 30, *p.* 128, *reversing order of life interests.*

(2) and (3) *After death of Wife and Husband, for issue as they jointly or the survivor appoint—In default for children—Hotchpot clause—Form No.* 37, *p.* 134.

4. *Advancement statutory powers—Form No.* 39A, *p.* 137.

5. *Trusts in default of children for Wife—Form No.* 41, *omitting first sub-clause, p.* 137.

6. *Power for Wife to make Settlement on future marriage, if required—Form No.* 46, *p.* 140.

7. *Investment clause and ancillary clauses—Form No.* 51, *including power to purchase land, p.* 152.

8. *Additional powers—Form No.* 56, *p.* 159.

9. *Power for Trustees to accept conveyance of land subject to the trusts of the Will—Form No.* 57, *p.* 160.

10. *Power for Trustees to allow existing investments held on the trusts of the Will to remain—Form No.* 63, *p.* 164.

(*a*) Notice in writing of the assignment must be given to the trustees of the Will: L. P. Act, 1925, s. 137.

11. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 163, *omitting sub clause* (1).

12. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

13. *Power for professional trustees to charge—Form No.* 66, *p.* 165.

14. *Power to appoint new Trustees—Form No.* 68, *p.* 166.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the residuary estate now subject to the trusts of the Will of the said ——.

First Part.

Particulars of real estate and leaseholds.

Second Part.

Particulars of personal estate.

No. XIX.

SETTLEMENT *of* FURNITURE (*b*) *belonging to the intended* WIFE *upon such* TRUSTS *as* WIFE *shall* APPOINT; *and in* DEFAULT *of* APPOINTMENT, *for* WIFE *for* LIFE *and then for her* CHILDREN; *and if* NO CHILD, *for her* STATUTORY NEXT OF KIN. VARIATIONS *where* TRUST *for* WIFE *for life, then for* HUSBAND *for life, and then for* CHILDREN *as* WIFE *shall* APPOINT; *and in* DEFAULT *of* APPOINTMENT, *equally; and if* NO CHILD, *for* APPOINTEES *or* STATUTORY NEXT OF KIN *of* WIFE. POWER OF SALE.

THIS SETTLEMENT, made, &c. (*date*), BETWEEN C. D., of, &c. (hereinafter called the Wife), of the 1st part, A. B., of, &c. (hereinafter called the Husband), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the third part: Parties.

(*b*) A settlement of furniture is seldom desirable, particularly as, since the M. W. P. Act, 1882, it will, in the absence of a settlement, remain the wife's separate property; see also *Re Magnus* [1910], 2 K. B. 1049. The deed does not require to be registered as a bill of sale: Bills of Sale Act, 1878, s. 4. Where chattels are settled to belong to the wife as her separate property the trustees are not necessary parties to an action by the wife against the husband for their wrongful detention: *Healey* v. *H.* [1915], 1 K. B. 938; 84 L. J. K. B. 1454. Furniture.

WITNESSETH, in consideration of a marriage intended shortly to be solemnised between the Husband and Wife, and declares as follows :—

Wife assigns furniture to Trustees.

1. The Wife, As Settlor, with the approbation of the Husband, hereby assigns unto the Trustees,

All the furniture, chattels and effects in and about the messuage No. 1, —— Street, in the Town of ——, which are mentioned in the Schedule hereto,

In trust for appointees of Wife.

To hold unto the Trustees absolutely In trust for such persons and in such manner generally as the Wife shall by any writing under her hand or by Will or codicil appoint :

In default for Wife and then for her children or next of kin.(c)

And in default of and until and subject to such appointment In trust to permit the Wife to use and enjoy the premises during her life And after her death In trust for her child or children by any marriage who attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares according to value :

(c) If desired, the following trusts may be substituted :—

Trust for Wife for life, and then for Husband for life, and then for children of Wife, as she shall appoint, and in default of appointment equally.

In trust to permit the Wife to use and enjoy the same during her life, and after her death [In trust to permit the Husband, if he survives her, to use and enjoy the same during the residue of his life, and after the death of the survivor of the Husband and Wife] In trust for such child or children or more remote issue (or any one or more of them exclusively of the other or others) by any marriage of the Wife, and in such manner as the Wife shall by deed or Will appoint :

And in default of and subject to such appointment In trust for all or any of the children or child by any marriage of the Wife who attain the age of twenty-one years, and if more than one to be divided between them equally according to value :

If no child, for appointees by Will of Wife, and in default of appointment for Wife or her next of kin.

And if there shall be no child of the Wife who attains the age of twenty-one years In trust for such person or persons as the Wife shall by Will generally appoint, And in default of and subject to such appointment In trust for the Wife absolutely, if she shall survive her now intended coverture :

But if she shall die during her coverture In trust for, &c. (*next of kin, as in the text*).

If the trusts are declared in this way, the following power of sale should be substituted for clause 2 :—

Power of sale.

The Trustees may at any time, with the consent of the Wife during her life, and after her death [with the consent of the Husband during his life, and after the death of the survivor of

AND if there shall be no such child, then IN TRUST for the persons who under the Administration of Estates Act, 1925, would have been entitled thereto at her death as her statutory next of kin if she had died possessed thereof intestate domiciled in England [and without ever having been married] such persons, if more than one, to take in the shares and manner in which the same would have been divisible between them under the said Act.

Power for Trustees to sell.

2. THE Trustees may at any time, with the consent of the Wife during her life, and after her death at their discretion, sell the premises or any of them, and in case of any such sale shall either apply the net proceeds in purchasing other furniture and effects or shall invest the net proceeds in any investments or securities authorised by law as investments for trust money, with power, with such consent or at such discretion as aforesaid, to vary the said investments for others of a like nature: And shall stand possessed of the said proceeds and the investments thereof, and the furniture and effects (if any) to be purchased as aforesaid, UPON TRUSTS and subject to powers and provisions corresponding as nearly as may be with those hereinbefore declared concerning the premises hereby assigned or such of them as shall be then subsisting or capable of taking effect.

Proviso for indemnity of Trustees.

3. PROVIDED that while the premises hereby assigned or any of them shall remain in the possession of the Wife,(d) the Trustees shall not be bound to see to the preservation thereof, nor be answerable for any loss or injury which may happen thereto.

---

the Husband and Wife] at the discretion of the Trustees, sell the premises hereby assigned, or any of them, and either apply the net proceeds in purchasing other furniture, chattels or effects, or invest the same in, &c. (*as in the text*), and shall stand possessed of the proceeds and the investments representing the same Upon the like trusts and subject to the like powers and provisions as are hereinbefore declared concerning the premises hereby assigned, or such of them as shall be then subsisting or capable of taking effect.

This Precedent gives an example of one of the few cases where a power of sale (as distinguished from a trust for sale) is of any practical use. If desired the provisions as to inventories, &c., in Form 3 of the Statutory Will Forms, 1925, can be incorporated, with slight modification, by reference to that form.

(*d*) If the husband is given a life interest in the furniture, say "or of the Husband."

Power to apportion.

4. The Trustees may value and apportion any chattels hereby settled among the persons entitled thereto under the trusts hereof, and every apportionment and valuation shall be as binding upon all persons beneficially interested as if the same had been duly made by a court of competent jurisdiction.

New trustees.

5. The Wife during her life shall have power from time to time to appoint a new trustee or new trustees hereof.(*e*)

In witness, &c. (*Add Schedule.*)

No. XX.

POST-NUPTIAL SETTLEMENT *of* INVESTMENTS *on the* WIFE *and* ISSUE *of the* SETTLOR *by any marriage without any* TRUST *or* POWER *of* REVOCATION *for the* SETTLOR *with a view to avoiding* DEATH DUTIES.(*f*)

Parties.

THIS SETTLEMENT is made, &c. (*date*), BETWEEN A. B., of, &c. (hereinafter called the Settlor), of the one part, and C. T., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the other part:

Intention to settle.

Whereas the Settlor, being desirous of making some provision for C. B., his wife (hereinafter called the Wife), and his issue, has transferred the investments mentioned in the Schedule hereto into the joint names of the Trustees, to be held by them Upon the trusts hereinafter declared concerning the same:

Witnessing part.

NOW, in consideration of the natural love and affection of the

---

(*e*) If the husband is given a life interest in the furniture, use Form No. 68, p. 166.

(*f*) As to voluntary settlements, see Chap. III, Sect. VIII, p. 90, *et seq.*

Stamps.

For the stamps thereon, see Fin. (1909-10) Act, 1910, s. 74. The duty in the case of real estate is sometimes prohibitory.

Settlement by parent on unmarried daughter or extravagant son.

Where a parent makes a settlement in favour of an unmarried daughter or extravagant son the Forms will be almost the same as in the case of a marriage settlement, but the child will be given a power (Form No. 44, p. 139), only to appoint a life interest to a husband or wife, and the life interest of the son will be protected: Form No. 34c, p. 133.

Evasion of death duties and income tax.

Voluntary settlements made with a view to evading death duties must not contain any trust, &c., for the benefit of the settlor: Fin. Act, 1894, s. 2 (3); Fin. (1909-10) Act, 1920, s. 59; the powers given in the text are not "for the benefit of the settlor"; nor a power of revocation exercisable by him; such settlements may incidentally evade the super-tax on large incomes: Fin. (1909-10) Act, 1910, s. 66. The settlor must survive the settlement by at least three years and must do all things necessary for legally vesting the property in the trustees. As to income tax generally, see p. 105, *supra*. Under the Fin. Act, 1922, s. 20, income derived from property held under revocable settlements and certain other dispositions is deemed for the purposes of income tax to belong to the settlor or disponor.

Settlor for his Wife and issue, THIS DEED WITNESSETH, and it is hereby declared as follows :—

Trust to invest and vary.

1. THE Trustees shall stand possessed of the investments mentioned, &c. (*continue as in Form No.* 25, *p.* 126, *omitting consents of Husband and Wife*).

Trusts for Wife and issue.

2. *Definition of Trust Fund and trusts thereof—Form No.* 29, *p.* 128, *omitting parts in brackets.*

(1) UPON TRUST to pay the income of the Trust Fund to the Wife during her life [until she remarries].

(2) AFTER the death [or second marriage (which first happens)] of the Wife the capital and income of the Trust Fund shall be held IN TRUST for all or any one or more, exclusively of the other or others of the child, children or more remote issue of the Settlor by his present or any future marriage, at such ages or times (not being earlier as to any child than his or her age of twenty-one years or day of marriage), in such shares, if more than one, and in such manner generally as the Settlor shall by deed, revocable or irrevocable, or by Will or codicil appoint, And in default of, until and subject to any such appointment, IN TRUST for all or any the children or child of the Settlor by any marriage who attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares.

(3) *Hotchpot clause—Form No.* 37, *p.* 135, *last clause.*

(4) *Advancement statutory power—Form No.* 39A, *p.* 137.

Ultimate trust for present Wife absolutely.

3. IF there shall not be any child of the Settlor by any marriage who attains a vested interest under the trust hereinbefore declared in default of appointment, then, subject to the trusts and powers hereinbefore contained, the Trust Fund and the income, &c. (*continue Form No.* 41, *p.* 137, *sub clause* (1), *saying at the end of that sub-clause* "In trust for the Wife absolutely").

Power for Settlor to appoint life interest to future Wife.

4. THE Settlor may from time to time by deed, revocable or irrevocable, or by Will or codicil appoint to or in favour of any after-taken Wife who may survive him during, &c. (*continue and adapt Form No.* 44, *p.* 139).

5. *Investment clause and ancillary clauses—Form No.* 51, *p.* 152.

6. *Power for Trustees to appropriate, &c.—Form No.* 61, *p.* 163, *omitting sub-clause* (1).

7. *Indemnity to Trustees, if required—Form No.* 62, *p.* 163.

8. *Power for professional Trustees to charge—Form No.* 66, *p.* 165.

9. The Settlor during his life shall have power to appoint a new trustee or new trustees hereof.

In witness, &c.

The Schedule.

Particulars of investments.

No. XXI.

SETTLEMENT (*g*) *by a* BACHELOR *for the benefit of* HIMSELF *and any future* WIFE *and* ISSUE *to protect him against future* CREDITORS; POWER OF REVOCATION *with the consent of the* TRUSTEES.

THIS SETTLEMENT is made, &c. (*date and parties as in last Precedent*): Whereas:—

(1) (*Recite Will under which Settlor is entitled to a share of the testator's residuary estate, subject to the life interest of the testator's wife, see Form No.* 5, *p.* 115):

Desire to make Settlement.

(2) The Settlor is desirous as part of a family arrangement made with —— of settling his reversionary share under the said Will in manner hereinafter appearing:

NOW, for effectuating the said desire, THIS DEED WITNESSETH, and it is hereby declared as follows:—

Assignment of reversionary share.

1. The Settlor, As Settlor, hereby assigns unto the Trustees All, &c. (*describe the Settlor's share intended to be settled, see Form No.* 16, *p.* 120).

To have and receive the same (subject to the life interest therein of the said ——) unto the Trustees absolutely Upon the trusts hereinafter declared concerning the same.

Trust to invest and vary.

2. The Trustees shall stand possessed of the share and premises hereinbefore assigned Upon trust (*continue Form No.* 27, *p.* 127, *substituting* "with the consent of the Settlor during his life and after his death at the discretion, &c.," *for* "*the consent of Husband and Wife and survivor*").

Definition of the Trust Fund and trusts thereof.

3. The Trustees shall stand possessed of the share and premises hereinbefore assigned and the investments, &c. (*continue Form No.* 29, *p.* 128).

Discretionary trust during

(1) Upon trust during the lifetime of the Settlor to apply the

Payment of settlor's liabilities.

(*g*) Notice in writing of the assignment must be given to the trustees of the Will: L. P. Act, 1925, s. 137.

This Precedent will not operate to save death duties. It is assumed that the settlor's debts have been paid for him (*e.g.*, by a parent) on condition that he settles the property. A statutory declaration to show that the settlor's liabilities have been discharged should be obtained.

annual income of the Trust Fund for the maintenance, support or otherwise for the benefit of all or any one or more exclusively of the other or others of the Settlor and any wife and issue of his for the time being in existence, and any persons who, if he had died intestate, would be entitled to the Trust Fund or the income thereof as the Trustees, in their absolute discretion, without being liable to account for the exercise of such discretion, think fit :

lifetime of Settlor.

(2) AND after the death of the Settlor, and subject to any life or less interest appointed to any wife of his under the power for that purpose hereinafter contained, the capital and income of the Trust Fund shall be held IN TRUST for all, &c. (*continue as in clause* 2 (2) *of last Precedent*).

Trusts for issue by any marriage and in default for children.

(3) *Hotchpot clause—Form No.* 37, *last clause, p.* 135.

(4) The statutory power of advancement shall apply for the benefit of the issue of the Settlor, but during his lifetime shall be exercisable only with his consent.

4. (*As in clause* 3 *of last Precedent, but saying at the end* :) UPON SUCH TRUSTS and for such purposes generally as the Settlor shall by Will or codicil appoint, And in default of and until and subject to any such appointment IN TRUST for the persons who under the Administration of Estates Act, 1925, would have become entitled thereto at the death of the Settlor as his statutory next of kin, if he had died possessed thereof intestate domiciled in England [without ever having been married] such persons, if more than one, to take in the shares and manner in which they would have taken under the said Act :

Ultimate trusts as Settlor shall appoint by Will and in default to statutory next of kin.

5. (*As in clause* 4 *of last Precedent, but saying* "any wife who may survive him.")

Power for Settlor to appoint life interest to Wife.

6. *Investment and ancillary clauses—Form No.* 51, *p.* 152.

7. *Provision as to income of Settlor, substituting* "Settlor" *for* "*Husband*"—*Form No.* 60A, *p.* 162.

8, 9, and 10. *As in* 7, 8, *and* 9, *last Precedent.*

11. *Power for Settlor to revoke with consent of Trustees—Form No.* 71, *p.* 167, *substituting* "Settlor" *for* "*the Wife*" *and the masculine for the feminine.*

Power of revocation with consent of Trustees. (*h*)

IN WITNESS, &c.

THE SCHEDULE.

Particulars of property held on the trusts of the recited Will.

(*h*) See note to Form No. 71, p. 167, as to the necessity for a power of revocation.

No. XXII.

SETTLEMENT *of a sum of Money transmitted to Trustees in* NEW ZEALAND (*i*) *for the Benefit of the* WIDOW *and* CHILDREN *of the Settlor's deceased* SON—INCOME *to be applied for the Benefit of* WIDOW *and* CHILDREN *until Youngest Child attains Twenty-one, and then* ANNUAL SUM *to be paid to* WIDOW *during* WIDOWHOOD; *and subject thereto,* TRUST FUND *to go to* CHILDREN—POWER *for* SETTLOR *to* REVOKE *and* DECLARE NEW TRUSTS *for Benefit of same Objects.*

Parties.

THIS SETTLEMENT is made, &c., BETWEEN A. B., of ——, in England, Esqre. (hereinafter called the Settlor), of the one part, and C. D. and E. F., both of ——, in New Zealand, Esqres. (hereinafter called the Trustees), of the other part: WHEREAS:—

Death of Settlor's son, leaving widow and children.

(1) G. B. (a son of the Settlor) lately died in New Zealand, leaving H. B., his widow, and also four children by her:

Settlor has transmitted money to Trustees.

(2) The Settlor, being desirous of making some provision for the wife and family of his said son, has lately transmitted the sum of £—— to the Trustees, To the intent that they may stand possessed thereof, Upon the trusts hereinafter declared concerning the same:

NOW, in consideration of the natural love and affection of the Settlor for the Wife and family of his said son, THIS DEED WITNESSETH and it is hereby declared as follows:—

Settlor directs Trustees to hold money upon following trusts.

1. THE Settlor, hereby directs and the Trustees hereby agree, that the Trustees shall and will stand possessed of the said sum of £——, Upon the trusts hereinafter mentioned.

Trustees to invest money.

2. THE Trustees (which expression, where the context admits, includes the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being hereof) (*j*), shall invest the said sum of £—— in their names, or under their control, in, &c. (*Continue Form No.* 51, *sub-clause* (1), *omitting the power to purchase land, p.* 152, *and continue*), with power from time to time at the like discretion to vary such investments for others of a like nature.

(*i*) The New Zealand Trustee Acts, 1908, as amended by the New Zealand Trustee Act, 1924, embodies many of the provisions contained in English Acts in relation to trustees, including provisions for the appointment of new trustees, that receipts of trustees shall be sufficient discharges, and for indemnity of trustees.

(*j*) The trustees should be defined here so as to include survivors, &c., as an enactment corresponding to the T. Act, 1925, s. 18, has not been enacted in New Zealand.

Definition of "Trust Fund" and trusts thereof.

3. THE Trustees shall stand possessed of the said sum of £——, and the investments for the time being representing the same (hereinafter called the Trust Fund), and of the annual income thereof, Upon the trusts and subject to the powers and provisions following (namely) :—

During minority of youngest child, income to be applied for benefit of widow and children at discretion of Trustees.

(1) UPON TRUST during the minority of the youngest child for the time being of the said G. B., to apply the whole or such part as they or he shall think fit of the income of the Trust Fund for or towards the maintenance, support, or otherwise for the benefit of the said H. B. and the children of the said G. B., or any one or more exclusively of the other or others of them the said H. B. and the said children for the time being in existence, in such manner in all respects as the Trustees shall in their absolute discretion without being liable to account think fit,(*k*) and shall accumulate the surplus (if any) of the said income by investing the same and the resulting income thereof in manner aforesaid, To the intent that the accumulations shall be added to the Trust Fund and follow the destination thereof, with power nevertheless for the Trustees at any time to resort to the accumulations of any preceding year and apply the same for the maintenance, support and benefit of the said H. B., and the said children or any one or more of them :

When youngest child attains twenty-one, annual sum to be paid to widow during widowhood.

(2) If the said H. B. shall be living and shall not have married again at the time when the youngest child for the time being of the said G. B., attains the age of twenty-one years,(*l*) the Trustees shall thenceforth out of the income of the Trust Fund (including the said accumulations, if any) pay to the said H. B. the annual sum of £—— during her life if she shall so long continue the widow of the said G. B. :

Subject to annual sum, Trust Fund to go to children equally.

(3) Subject to setting aside a fund to answer out of the income thereof the said annual sum hereinbefore directed to be paid to the said H. B., the Trust Fund (including the said accumulations, if any) shall, if and when the youngest child for the time being of the said G. B., attains the age of twenty-one years, be divided among all or any the children or child of the said G. B., who attain the age of twenty-one years, or being female marry under that age, and if more than one, in equal

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Duty.

(*k*) As to liability for duty under this discretionary trust see *A.-G.* v. *Wade* [1910], 1 K. B. 703.

(*l*) See *Re Shurey* [1918], 1 Ch. 263 ; 87 L. J. Ch. 245, as to the date when the prescribed age is reached.

shares [and so that the share of each such child shall be a vested and transmissible interest in such child being a son upon his attaining the age of twenty-one years, or being a daughter upon her attaining that age or marrying (which first happens), notwithstanding that he or she may die before the period of distribution]:

Power for Trustees, with consent of widow, and after her death or second marriage at their discretion, to raise money for advancement of children.

(4) The Trustees may at any time during the minority of the youngest child for the time being of the said G. B., with the consent in writing of the said H. B. during her widowhood, and after her second marriage or death (which first happens) at the discretion of the Trustees, raise out of the Trust Fund any sum, and apply the same for the advancement or benefit of any child of the said G. B., and any sum so applied for the advancement or benefit of any child shall be taken in or towards satisfaction of the ultimate share of such child in the Trust Fund and be accounted for accordingly, if that child attains a vested interest.

If no child attains a vested interest, Trust Fund to revert to Settlor.

4. If no child attains a vested interest in the Trust Fund, the same (including the said accumulations) shall, subject to the trusts and powers hereinbefore contained, revert to and be held IN TRUST for the Settlor absolutely.

Power for Trustees to purchase any property in the United Kingdom or New Zealand as an investment.

5. (1) The Trustees may from time to time at their discretion lay out the Trust Fund (including the said accumulations) or any part thereof in the purchase of any real or personal property or things in action in the United Kingdom or in New Zealand of whatsoever nature or kind, and the Trustees shall stand possessed of any property to be purchased as aforesaid UPON TRUST that they shall sell the same or any part thereof, with full power at their discretion to postpone any such sale, and shall stand possessed of the net money to arise from such sale (after payment of costs) Upon the trusts and subject to the powers hereby declared concerning the said sum of £——, including this present power of purchasing property, and shall in the meantime and until such sale pay and apply the net rent or income arising from the property to be purchased as aforesaid to the persons and in the manner to whom and in which the income of the money laid out in the purchase of such property would for the time being be payable under the trusts hereof if such purchase had not been made:

As to occupation.

(2) THE Trustees may during the minority of the youngest child for the time being of the said G. B., permit the said H. B., and her children to reside in or occupy any house or property so

purchased upon such terms as the Trustees may in their absolute discretion think fit :

Powers of management of land.

(3) THE Trustees shall have and may exercise in reference to any land or interest in land for the time being subject to the trusts hereof all the powers which are by the Law of Property Act, 1925 (by reference to the Settled Land Act, 1925, or otherwise), or by the Trustee Act, 1925, applicable to land in England held on trust for sale as if such powers had been incorporated in this deed, and in addition to any powers which by the local law may be applicable to the land.

English statute law to apply.

6. (1) IN the administration and construction of this deed, the English statute law from time to time in force shall apply thereto so far as the local law will permit, and the Trustees shall be entitled to the like indemnities as if the trust were being administered in England :

Remuneration.

(2) THE Trustees shall be entitled to such remuneration (if any) for their services as may be authorised by the local law.

Power for Settlor to revoke and declare new trusts in favour of the widow or issue of deceased son of Settlor.

7. PROVIDED that the Settlor may at any time during his life by any deeds, revocable or irrevocable, revoke or vary, either wholly or partially the trusts and powers hereby declared concerning the Trust Fund or any part thereof (including any accumulations), and by the same or any other deed may appoint any new or other trusts or powers concerning the premises to which such revocation shall extend as he shall think fit [but so that such new or other trusts or powers shall be for the benefit of the said H. B. and the children and remoter issue of the said G. B., or some or one of them].

IN WITNESS, &c.

Part III.

INSTRUMENTS RELATING TO SETTLEMENTS (PERSONAL).

Preliminary Note on Appointments under Powers.

What appointments may be made under a power to appoint amongst children or issue.

Appointment may be made upon such trusts, &c., as child shall generally appoint.

Appointment may be made to trustee for object.

A power to appoint to children in such shares and manner as the donee shall direct is effectually exercised by an appointment of a limited interest to one and of the capital of the fund to another: *Alexander* v. *A.* (1755), 2 Ves. Sen. 640; *Bristow* v. *Warde* (1794), 2 Ves. 336; by an appointment of the whole fund to one to the exclusion of the other: L. P. Act, 1925, s. 158; by an appointment upon such trusts as a child, being an object of the power, shall generally by deed or Will (and if the child was born at the time of the creation of the power, but not otherwise, as such child shall by Will alone) appoint: *Jebb* v. *Tugwell* (1855), 7 D. M. & G. 663; 25 L. J. Ch. 109; *Phipson* v. *Turner* (1838), 9 Sim. 227; *Morgan* v. *Gronow* (1873), L. R. 16 Eq. 1; 42 L. J. Ch. 410; *Slark* v. *Dakyns* (1874), L. R. 10 Ch. 35; 44 L. J. Ch. 205, by an appointment to trustees in trust for the objects of the power: *Trollope* v. *Linton* (1828), 1 Sim. & St. 477; 2 L. J. (O. S.) Ch. 3; or to trustees upon trust to sell real estate and divide the proceeds among the objects: *Kenworthy* v. *Bate* (1802), 6 Ves. 793; *Fowler* v. *Cohn* (1856), 21 Beav. 360; *Re Paget* [1898], 1 Ch. 290; 67 L. J. Ch. 151; *Re Redgate* [1903], 1 Ch. 356; 72 L. J. Ch. 204; *Re Adams and Frost* [1907], 1 Ch. 695; 76 L. J. Ch. 408; *Re Hughes* [1921], 2 Ch. 208; 91 L. J. Ch. 10.

A power exercisable with the consent and concurrence of trustees does not necessitate their approval of the persons to benefit thereunder, but merely makes the exercise of the power conditional upon this consent and concurrence: *Re Dilke* [1921], 1 Ch. 34; 90 L. J. Ch. 89.

Appointment by direction of object to persons who are not objects.

Again, under a power to appoint to children the fund may, by the direction of a child, either in contemplation of or subsequently to marriage, be appointed in favour of his or her issue, or to the trustees of his or her settlement. Such an arrangement is regarded, first, as an appointment, and then as a settlement by the object of the power: *Thompson* v. *Simpson* (1841), 1 Dr. & War. 459; see also *White* v. *St. Barbe* (1813), 1 V. & B. 399; Sug. Pow. 670; *Limbard* v. *Grote* (1832), 1 Myl. & K. 1; 2 L. J. Ch. 10. It is, however, cumbersome, and is not recommended.

An appointment of this kind made on the marriage of an infant daughter by the direction of her intended husband has been held good: *Fitzroy* v. *Duke of Richmond* (1859), 27 Beav. 190; 28 L. J. Ch. 752; see also *Re Turner's S. E.* (1884), 28 Ch. D. 205; 54 L. J. Ch. 690.

In *Wright* v. *Goff* (1856), 22 Beav. 207; 25 L. J. Ch. 803; a tenant for life had a power of appointing a fund amongst her children. A married woman was the only object of the power, and an arrangement was entered into between the tenant for life, the married woman and her husband, whereby the fund was appointed to her and then resettled, giving an interest to her children and to a stranger. The husband survived, and the transaction was held to be binding on him.

Who to retain fund

If under a marriage settlement in the ordinary form the surviving parent appoints to A., one of the children, upon trust for the benefit of another child, the fund must be retained by the trustees of the settlement and not transferred to A.: *Busk* v. *Aldam* (1874), L. R. 19 Eq. 16; 44 L. J. Ch. 119; followed in *Re Mackenzie* [1917], 2 Ch. 58; 86 L. J. Ch. 543, and explained in *Re Paget, supra.*

where appointed to a trustee.

With regard to the application of the rule against perpetuities to appointments under special powers, the following points may be noted:—

Perpetuities.

An appointment of personal estate to a child unborn at the date of the instrument creating the special power for life, or for life determinable on marriage or on some other event, with a gift over to the other children, is valid throughout, but if the gift over is to such of the other children as shall be living at the determination of the prior interest, the gift over would be too remote: *Wainwright* v. *Miller* [1897], 2 Ch. 255; 66 L. J. Ch. 616; *Re Gage* [1898], 1 Ch. 498; 67 L. J. Ch. 200. The rule is now the same in regard to land: L. P. Act, 1925, s. 161.

Life interest to unborn child.

An appointment to take effect upon a contingency is void if, when the appointor takes the last life interest under the instrument creating the power, the contingency might happen after the expiration of twenty-one years after his death: *Re Crichton* (1912), 56 Sol. J. 398; save that if the contingency is, after 1925, made to depend on the appointee attaining an age exceeding twenty-one years, the age of twenty-one will be substituted and the appointment may be thereby validated: L. P. Act, 1925, s. 163. The section applies where the testator, being the appointor, dies after 1925, though the Will was made before 1926.

Contingent appointment.

Statutory validation.

A restraint on anticipation annexed to a life interest appointed to a daughter is invalid if she was unborn at the date of the instrument creating the limited power, but is valid if she was born before that date: *Herbert* v. *Webster* (1880), 15 Ch. D. 610; 49 L. J. Ch. 602; *Re Ferneley's Trusts* [1902], 1 Ch. 543; 71 L. J. Ch. 422; and see *Re Game* [1907], 1 Ch. 276; 76 L. J. Ch. 168. The restraint might be imposed for twenty-one years.

Restraint on anticipation.

In exercising a power of appointment among children or other objects, the substantial motive of the appointment must be the benefit of the objects of the power; an appointment made to such objects with a view, not to their exclusive benefit, but to the benefit either wholly or partially of the donee of the power, or any other person, is void, as being what is technically called a fraud on the power: Farwell, 3rd ed., 457; the doctrine applies to a revocation of an appointment, hence the donee of the power cannot revoke a previous appointment with the avowed object of obtaining a benefit by that revocation: *Re Jones* [1915], 1 Ch. 373; 84 L. J. Ch. 406. This must be distinguished from a release of a power.

Fraud on the power.

Revocation of appointment.

An appointment to a child, however young, is not in itself necessarily fraudulent, though the effect may be to give the whole fund to the donee of the power as administrator. An appointment will be looked upon with suspicion if from the facts of the case, as, *e.g.*, from the child being in bad health at the time and likely to die soon, it seems to the court that the intention of the appointor was to benefit himself, and not the appointee, see *Henty* v. *Wrey* (1882), 21 Ch. D. 332; 53 L. J. Ch. 667. Whether the appointor will benefit himself if the child dies intestate will generally depend after 1925 on Ad. of E. Act, 1925, s. 46. Where it is made in favour of young children who die soon afterwards (particularly where the child is in bad health at the time of the appointment) very little evidence of improper motive will induce the court to set it aside: *Hinchinbroke* v. *Seymour* (1784), 1 Bro. C. C. 395; *Re De Hoghton* [1896], 2 Ch. 385, 397; 65 L. J. Ch. 667.

Appointment to children in bad health.

It is a fraud on the power if the appointment is made with a view to benefit a stranger as, for instance, upon a secret understanding that the appointee shall reassign the whole or part of the fund to a stranger: *Daubeny* v. *Cockburn* (1816), 1 Mer. 626. In *Birley* v. *B.* (1858), 25 Beav. 299; 27 L. J. Ch. 569,

Appointment to benefit strangers.

an appointment made to two children, who, a year afterwards, settled the appointed fund on persons who were not objects of the power, the deed containing a recital that when the appointment was made it was understood that the appointees should consider themselves possessed of the funds upon the trusts declared in the settlement, was held void, and see Farwell, 3rd ed., 475.

Secret trust to resettle.

Where the donee of a power to appoint amongst children executed an appointment in favour of two of her children, and such appointment was made on a previous understanding that they should resettle the property appointed first, for the benefit of themselves, and finally for persons not objects of the power, the appointment was held to be bad: *Pryor* v. *P.* (1864), 2 De G. J. & S. 205; 33 L. J. Ch. 441; *Knowles* v. *Morgan* (1909), 54 Sol. J. 117.

In *Duke of Portland* v. *Topham* (1869), 11 H. L. C. 32; 34 L. J. Ch. 113, 606, certain appointments to one of two objects of a power were held void as being frauds on the power, on the ground that there was a secret understanding between the appointor and appointee as to the mode in which the latter should deal with the fund.

Again, an appointment executed by parents in favour of a son to enable him to raise money to pay the parents' debts is void on the same principle: *Cloutte* v. *Storey*, 1911, 1 Ch. 18; 80 L. J. Ch. 193; so is an appointment made by the donee in pursuance of an alimony agreement entered into by him to obtain freedom to re-marry: *Cochrane* v. *C.* [1922], 2 Ch. 230; 91 L. J. Ch. 605.

Knowledge of appointee of the fraud not requisite.

If the motive or object of the appointment is to benefit a stranger, it is not necessary that the appointee should be aware of such motive or object. Thus, where a married woman, having a power of appointment among her children, appointed the fund by Will to her eldest daughter, in order that she might thereout benefit her father (the testatrix's husband), it being arranged between the testatrix and her husband that after the death of the former the latter should inform the appointee of the object of the appointment, the appointment was held bad: *Re Marsden* (1859), 4 Drew. 594; 28 L. J. Ch. 906. On the other hand, an appointment made to an object of the power with this addition, "who will, I am assured, settle the same voluntarily" in favour of persons not objects, was held good, there being no bargain on the part of the appointee, and he being therefore free from any obligation to settle it: *Re Crawshay* (1890), 43 Ch. D. 615; 59 L. J. Ch. 395.

Suspicion of fraud not sufficient.

Appointment to enable title to be made.

Mere suspicion that the appointor's motive was to benefit himself or others is not sufficient to invalidate the appointment. Thus, in *M'Queen* v. *Farquhar* (1805), 11 Ves., at p. 479, a tenant for life entered into a contract for sale, but, finding that he could not make a good title without exercising a power reserved to him of appointing the estate among all or any of his children, he exercised the power in favour of his eldest son in fee. Then the father and mother (who were entitled respectively to life estates), as well as the son, conveyed the estate to the purchaser in consideration of £8,000 paid to the father, mother and son (such an appointment would not now be of any avail, as title would have to be made under the S. L. Act; see L. P. Act, 1925, s. 42); it was held that the power was well executed, and that the purchaser must take the title. Lord Eldon observed that there was nothing to show that the son was not to receive a due proportion of the money when the contract was afterwards executed by the deed, see also *Green* v. *Pulsford* (1839), 2 Beav. 70; *Cockcroft* v. *Sutcliffe* (1856), 25 L. J. Ch. 313; *Hamilton* v. *Kirwan* (1845), 2 Jo. & Lat. 393; *Roach* v. *Trood* (1876), 3 Ch. D. 429; *Saunders* v. *Shafto* [1905], 1 Ch. 126; 74 L. J. Ch. 110.

Appointment by way of family arrangement to obtain powers of management.

If the appointment is made with a view to secure a benefit to all the objects of the power, the appointment is not bad, though the donee may to some extent participate in such benefit. Thus, where an appointment was made to one of the objects, and the appointor and appointee then executed a deed to enable building leases to be granted, there being no power to grant building leases in the original settlement, and subject thereto the property was relimited substantially to the old uses, the appointment was held valid: *Re Huish's Charity* (1870), L. R. 10 Eq. 5; 39 L. J. Ch. 499. In view of the wide powers given to tenants for life and to trustees for sale, such an arrangement would now be unnecessary.

Contemporaneous arrangement, in what cases valid.

Nor does it render an appointment bad that there is a contemporaneous arrangement with the appointees, provided that their substantial interests in the property are not thereby diminished. Hence, where a tenant for life, with a power of selection amongst his children, had received from the trustees part of the trust money in breach of trust, and afterwards appointed to his daughters, in exclusion of his son, this money, which had been advanced to him, and a sum of £500, and contemporaneously with the appointment the daughters exchanged the sums so appointed for an estate of the father, the transaction was supported, for the estate was not proved to be of less value than the amount given in exchange: *Askham* v. *Barker* (1853), 17 Beav. 37; 22 L. J. Ch. 769.

Query whether the appointor may take under the ultimate trusts of the appointee's settlement.

Where, on the marriage of a daughter under age, the father made an appointment to her, and by the settlement the appointed money, and also a further sum secured by the father's bond, was settled on the usual trusts for the daughter and her husband, and the issue of the marriage, with an ultimate trust in default of issue for the father, the appointment was held good, on the ground that all that the father took was the husband's marital right, the daughter not being bound (see now M. W. P. Act, 1907, s. 2). A similar appointment and settlement in the case of another daughter who was of age was upheld by James, V.-C., on the ground that the father gave a sufficient consideration for the reversionary interest; but the Lord Chancellor on appeal thought the transaction of doubtful validity: *Cooper* v. *C.* (1869), L. R. 5 Ch. 203; 39 L. J. Ch. 240.

Appointments severable.

Under a power of distribution amongst the children, the fraudulent appointment of one share does not invalidate the appointment of the remaining shares: *Rowley* v. *R.* (1854), Kay, 242; 23 L. J. Ch. 275.

Fraudulent condition.

An appointment by Will to some of the objects on condition that they release the appointor's estate from certain claims, with a gift over to other objects if the release was not given, is void *in toto*: *Re Perkins* [1893], 1 Ch. 283; 62 L. J. Ch. 531; and so is an appointment on condition that the appointee pays the appointor's debts: *Re Cohen* [1911], 1 Ch. 37; 80 L. J. Ch. 208.

Condition as to religion.

A proviso determining a life interest in the event of the appointee marrying a person who did not profess the Jewish religion, or becoming a Roman Catholic, or a member of a sisterhood, is not invalid, either as a fraud on the power or as contrary to public policy: *Wainwright* v. *Miller* [1897], 2 Ch. 255; 66 L. J. Ch. 616.

Appointed share does not pass by assignment of a share in default.

Where the object of a power is also entitled to a share in default of appointment, an assurance of his share before any appointment is made does not pass a share acquired by him under a subsequent appointment: *Sweetapple* v. *Horlock* (1879), 11 Ch. D. 745; 48 L. J. Ch. 660; *Lovett* v. *L.* [1898], 1 Ch. 82; 67 L. J. Ch. 20; see also *Re Walpole* [1903], 1 Ch. 928; 72 L. J. Ch. 522.

Protection to purchasers.

Where the appointee is not less than 25 years of age a purchaser in good faith for money's worth without notice, &c., of the fraud is protected to the extent to which the appointee would have taken in default of appointment: L. P. Act, 1925, s. 157, but the same care must be taken in investigating titles as before 1925: 1 Wolst. & Cherry, 11th ed., 408–9.

Release of special power.

A special power of appointment may be released by deed whether coupled with an interest or not: L. P. Act, 1925, s. 155; provided that it is not coupled with a duty: *Re Eyre*, 49 L. T. 259; 1883, W. N. 153; *Weller* v. *Ker* (1866), L. R. 1 H. L. (Sc.) 11; *Saul* v. *Pattinson* (1886), 55 L. J. Ch. 831.

Release of power valid, even though appointor is benefited by it.

A power of appointment among children is not a power coupled with a duty, and where there is a gift in default of appointment to the children equally, the donee may release his power, even where, by the death of one of his children intestate, he has become entitled to a share. If in the latter case he surrenders his life interest, the trustees will be bound, at his request, to transfer the fund to him as the personal representative of the deceased child: *Re Radcliffe* [1892], 1 Ch. 227; 61 L. J. Ch. 186; *Re Somes* [1896], 1 Ch. 250; 65 L. J. Ch. 262; this would apply after 1925 if the appointor becomes entitled to the property under Ad. of E. Act, 1925, s. 46. A trustee in bankruptcy cannot release a special power for the benefit of the bankrupt's estate: *Re Rose* [1904], 2 Ch. 348, *per* Farwell, J.; 73 L. J. Ch. 726; but the order in that case was by consent discharged by the C. A. on the ground that the persons interested under the power were not before the court: [1905], 1 Ch. 95; 74 L. J. Ch. 22.

Trustee in bankruptcy.

Covenant not to exercise power.

A covenant by the donee not to exercise a testamentary power so as to diminish the share which the covenantee would take in default of appointment is valid as a release *pro tanto*: *Davies* v. *Huguenin* (1863), 1 H. & M. 730; 32 L. J. Ch. 417: L. P. Act, 1925, s. 155. Sufficient property must, if necessary, be left to devolve in default of appointment to give effect to the release, and any appointments in excess of the balance must abate rateably: *Re Evered* [1910], 2 Ch. 147; 79 L. J. Ch. 465, which overruled the method of working out the result of the release employed in *Davies* v. *Huguenin, supra*; but appointments might be made which give effect to the release: *Re Evered, supra*; *cf. Re Cooke* [1922], 1 Ch. 292; 91 L. J. Ch. 273.

Covenant as to exercise of special power.

A covenant to exercise a special testamentary power in a particular manner, or not to revoke a particular appointment, is void: *Re Bradshaw* [1902], 1 Ch. 436; 71 L. J. Ch. 230: *Re Cooke, supra*; but an appointment actually made is not invalidated by reason of its having been made in pursuance of a covenant: *Coffin* v. *Cooper* (1865), 2 Dr. & Sm. 365; 34 L. J. Ch. 629; *Palmer* v. *Locke* (1880), 15 Ch. D. 294; 50 L. J. Ch. 113.

Special power is fiduciary.

A special power places the donee in a fiduciary position and cannot be delegated: Farwell, 3rd ed., 499: see *Re Airey* [1897], 1 Ch. 164; 66 L. J. Ch. 152.

Covenant to charge a jointure.

A covenant to charge a jointure on land which may devolve upon the covenantor operates as a defective execution of a power to jointure conferred after the date of the covenant; the court will give effect to it: *Charlton* v. *C.* [1906], 2 Ch. 523; 75 L. J. Ch. 715.

Execution of powers by infants or foreigners.

An infant cannot execute a power over real estate, except a power simply collateral: *Hearle* v. *Greenbank* (1749), 3 Atk. 695, this could now only apply to an equitable power; but, as regards personalty, he may exercise, otherwise than by Will, a power over property which, but for the appointment, would belong to some other person. It follows that the ordinary power of appointment among issue contained in a marriage settlement of an infant may be exercised during infancy: *Re D'Angibau* (1880), 15 Ch. D. 228; 49 L. J. Ch. 756, "because the authority to dispose proceeds from the donor of the power, and not from the donee": *Pouey* v. *Hordern* [1900], 1 Ch., at p. 495; 69 L. J. Ch. 231 (a case of a foreigner of full age), see Farwell, 3rd ed., 141, 142. As to powers of attorney granted by married women infants: L. P. Act, 1925, s. 129.

Appointments of equitable interests in land.

Under the old law where land purchased under a power in a money settlement, but not directed to be held on trust for sale, was appointed, words of inheritance had to be used: *Re Thursby* [1910], 2 Ch. 181; 79 L. J. Ch. 538; but if the settlement had been made after 1911 there would have been a statutory trust for sale: L. P. Act, 1925, s. 32; after 1925 words of inheritance are not essential in any case: *ib.*, s. 60.

Double portions.

Where there is an appointment by Will in favour of several objects of a special power followed by an appointment by deed in favour of one of the same objects the rule against double portions applies, and the objects who take under the deed cannot also take under the Will: *Re Peel* [1911], 2 Ch. 165; 80 L. J. Ch. 574.

Equitable interests.

All appointments of interests in land create equitable interests only: L. P. Act, 1925, s. 1.

No. I.

APPOINTMENT *by* PARENTS *under a* POWER *in their* MARRIAGE SETTLEMENT *among their surviving* CHILDREN *equally, some being of age and others under age, with* POWER *of* REVOCATION *except as to the share of a* SON *about to marry.*(*a*) VARIATIONS *where there has been a* PREVIOUS APPOINTMENT, *or where a Daughter's Share is not to vest if she dies unmarried within Twenty-one Years from the Death of the Survivor of her Parents.*

THIS APPOINTMENT is made, &c. (*date*), BY A. B., of, &c., and C. B., his wife (hereinafter called the Appointors): WHEREAS:—

Settlement.

(1) This deed is supplemental to a Settlement (hereinafter called the Principal Deed), dated, &c., and made between the said A. B. of the 1st part, the said C. B. (then C. D., Spinster), of the 2nd part, and E. F., G. H. and I. K., of the 3rd part (being a settlement made in consideration of the marriage, shortly after solemnised between the Appointors), whereby it was agreed that after the solemnisation of the said marriage certain investments which had been previously transferred into the joint names of the parties thereto of the 3rd part, or the investments for the time being representing the same (therein and hereinafter called the Trust Fund), should be held UPON TRUST for payment of the income thereof to the Appointors successively during their respective lives, and after the death of the survivor of them (as to both capital and income) IN TRUST for, &c. (*set out fully the trust for issue as husband and wife or survivor should appoint*):

As to issue of the marriage.

(2) There have been issue of the said marriage eight children and no more (namely), L. B. and M. B., who both attained the

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Appointment on marriage of child.

(*a*) For appointments made in favour of a particular child on marriage, see Prec. IV, last part, p. 179, *supra*. The object of the appointment in the text is to dispose of the shares of the children who have died, compare Prec. IV, p. 234, *infra*, where the parent takes advantage of his child's death.

age of twenty-one years and died respectively on the —— day of —— and the —— day of ——, and six surviving children (namely), N. B., O. B., P. B., R. B., S. B. and T. B.,(*b*) of whom the said N. B., O. B., and P. B. have attained the age of twenty-one years, and the said R. B., S. B., and T. B. are under that age, and the said N. B. is about to marry X. Y.:

State of Trust Fund.

(3) The Trust Fund is now represented by the investments mentioned in the Schedule hereto now standing in the joint names of —— and ——, the present Trustees of the Principal Deed:

Desire to appoint.

(4) The Appointors are desirous of making such appointment as hereinafter contained:

NOW, for effectuating the said desire and in exercise of the power for this purpose conferred by the Principal Deed and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment to surviving children equally.

1. The Appointors hereby appoint that the trustees for the time being of the Principal Deed shall, after the death of the survivor of the Appointors, and in the meantime subject to their respective life interests, stand possessed of the Trust Fund and all other (if any) the property now or which may by any means hereafter become subject to the trusts of the Principal Deed In trust for all or any of them the said six surviving children of the Appointors who attain the age of twenty-one years, or in the case of females marry under that age, and if more than one, in equal shares.(*c*)

[Variation where there has been a previous appointment. Appointment to six surviving children, one child bringing a previously appointed sum into hotchpot.]

[*Where there has been a previous appointment and it is intended that all the children shall take equally, the appointment to N. B. will be recited, and this clause should run as follows:*—

The Appointors hereby appoint that after the death of the survivor of them, and in the meantime subject to their respective life interests, the Trust Fund and all other (if any) the property now or which may by any means hereafter become subject to the trusts of the Principal Deed shall be held In trust for all or any of them the said six surviving children (including the said N. B.) of the Appointors who attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares:

(*b*) As a general rule, it is better to give the date of birth of each child. Notice of the appointment must be given to the trustees.

Application of advancement clause.

(*c*) This appointment does not take the appointed shares out of the provisions of the Settlement so as to defeat the advancement clause: *Re Hodgson* [1913], 1 Ch. 34; 82 L. J. Ch. 31; *cf. Re Greenslade* [1915], 1 Ch. 155.

PROVIDED that the said N. B. shall, under the hotchpot provision contained in the Principal Deed, bring into account the said sum of £—— [the share in the Trust Fund] so appointed to him as hereinbefore recited before taking any share in the premises hereinbefore appointed in like manner as if the trusts herein contained were the trusts in default of appointment declared by the Principal Deed].

[*Where a daughter's share is not to vest unless she marries or survives for twenty-one years after the deaths of her father and mother, the following clause should be inserted :—*

[Variation where a daughter's share is not to vest unless she marries or survives for twenty-one years after the deaths of her father and mother.

2. PROVIDED as follows :—

(1) If any daughter of the Appointors dies before the expiration of twenty-one years from the death of the survivor of the Appointors without ever having been married, the shares (as well original as accruing under this provision) of such daughter shall accrue to and be held IN TRUST in equal shares for the other or others of the said six surviving children of the Appointors who attain the age of twenty-one years, or marry under that age, and shall be living at the death of the survivor of the Appointors (not being a daughter or daughters the trusts of whose share have failed or determined as aforesaid), And for all or any of the issue (if any) then living of any of the said six children dying in the lifetime of the Appointors or of the survivor of them who attain the age of twenty-one years or marry under that age, such issue to take through all degrees, according to their stocks, in equal shares the share or shares which his or her parent would have taken if living at the death of the survivor of the Appointors and having then attained a vested interest, and so that no issue shall take whose parent is living at the death of the survivor of the Appointors and so capable of taking.

Gift over of daughter's share if she dies a spinster within twenty-one years from the death of her surviving parent.

(2) The income of any shares of a daughter which may be liable to be divested under the foregoing provision shall, after such daughter attains full age, be paid to her pending the indefeasible vesting of the shares and before she attains that age the statutory maintenance provisions shall apply to her shares.]

Application of income of daughter's defeasible shares.]

[2.] [3] The Appointors during their joint lives, or the survivor of them during his or her life, may from time to time by any deed revoke or vary either wholly or partially the appointments

Power of revocation.(d)

(d) A power of revocation should be reserved in this case, because a child of age at the date of the appointment might die without having been married,

Reason for reserving power of revocation.

hereby made [except that if the said intended marriage between the said N. B. and X. Y. shall be solemnised within six months from the date hereof, this power of revocation shall not apply to the original —— share of the said N. B. hereunder].

IN WITNESS, &c.

THE SCHEDULE.

Particulars of investments now subject to the trusts of the Principal Deed.

No. II.

APPOINTMENT *by a* FATHER *of* INVESTMENTS *to a* SON *and* SURRENDER *of the* FATHER'S LIFE INTEREST, *where* DUTIES *are to be paid out of the* UNAPPOINTED INVESTMENTS.(*e*)

Parties.

THIS APPOINTMENT is made, &c. (*date*), BETWEEN A. B., of, &c. (hereinafter called the Appointor), of the 1st part, E. B., of, &c. (*a son of the Appointor*), of the 2nd part, and G. H., of, &c., and J. K., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Settlement.

(1) This Deed is supplemental to a settlement (hereinafter called the Principal Deed), dated, &c., and made, &c. (*Recite Settlement as in last Precedent, defining the "Trust Fund"*):

Wife's death.

(2) The said C. B. (*wife*) died on the —— day of —— without ever having joined in exercising the joint power of appointment conferred on her and the Appointor by the Principal Deed:

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or might die leaving issue, to whom the appointment should be made direct to avoid double duties.

An appointment may be revocable, though the power does not refer to revocation.

A power of revocation and new appointment may be reserved, though the instrument creating the original power does not expressly authorise such a reservation: *Adams* v. *A.* (1777), 2 Cowp. 651; where the original power is given to two persons and the survivor, a joint appointment may be made reserving a power of revocation and new appointment to the survivor: *Brudenell* v. *Elwes* (1801), 1 East, 442; *Re Harding* [1894], 3 Ch. 315; 63 L. J. Ch. 725; but not to one of them during their joint lives: *Burnaby* v. *Baillie* (1889), 42 Ch. D. 282; 58 L. J. Ch. 842; see also Farwell, 3rd ed., 303, *et seq.*

Exercise of power of revocation.

A power of revocation and new appointment is not exercised *primâ facie* merely by a new inconsistent appointment. The previous appointment should be expressly revoked: *Re Thursby* [1910], 2 Ch. 181; 79 L. J. Ch. 538.

Duties on appointment and surrender of life interest.

(*e*) If the whole of the funds were appointed, the trustees could not safely transfer them to the son at once, because if the father died within three years estate duty would become payable: Fin. Act, 1900, s. 11; Fin. (1909-10) Act, 1910, s. 59. In any case succession duty will be payable, and can be commuted and paid in advance under the S. D. Act, 1853, s. 40. If the duties are to be paid out of the appointed fund, see next Precedent. Except as to estates of £1,000 or under within Fin. Act, 1894, s. 16 (3), the payment of estate duty no longer clears the property from succession duty: Fin. (1909-10) Act, 1910, s. 58 (2), unless within the provisions at the end of that sub-section.

(3) There was issue of the said marriage —— children and no more, of whom the said E. B., who was born on the —— day of ——, is one :

Children of the marriage.

[(4) The Appointor was born on the —— day of —— (*f*)] :

(5) The Trust Fund is now represented by the investments mentioned in the Schedule hereto and now standing in the joint names of the Trustees, who are the present trustees of the Principal Deed :

Particulars of Trust Fund.

(6) The Appointor is desirous of making such appointment and surrender in favour of the said E. B. as are hereinafter contained :

NOW, for effectuating the said desire and in exercise of the power for this purpose conferred by the Principal Deed and of all other powers, THIS DEED WITNESSETH as follows :—

1. THE Appointor hereby irrevocably appoints that the investments mentioned in the first part of the Schedule hereto shall be forthwith transferred by the trustees for the time being of the Principal Deed to the said E. B., absolutely free from the costs of and incidental to this Deed and the transfers required for giving effect to the same and from all duties which may on the death of the Appointor or otherwise become payable in respect of the premises hereby appointed, and so that all such costs (except so far as discharged by the Appointor) and duties and the costs of raising and paying the same shall be paid or commuted out of the investments mentioned in the second part of the Schedule hereto or other the investments for the time being representing the same, or out of such of them (of sufficient value) as the Appointor shall from time to time direct, in exoneration of the premises hereby appointed.

Appointment of investments in first part of schedule free from costs and death duties.

2. THE Appointor, As Settlor, hereby assigns and surrenders unto the Trustees :

Surrender of life interest so as to merge.

ALL THAT, the life interest of the Appointor in the investments mentioned in the first part of the Schedule hereto To the intent that such life interest shall forthwith merge in the reversionary interest in the same investments hereinbefore appointed to the said E. B. and be held IN TRUST for him absolutely.(*g*)

IN WITNESS, &c.

(*f*) For the stamp on the surrender, see Fin. (1909-10) Act, 1910, ss. 73, 74, and note on stamps, p. 99, *et seq.* The latter section applies unless the surrender is made in consideration of the son's marriage. This involves a valuation of the life interest, and in this case the date of birth of the surrenderor should be recited.

Stamp.

(*g*) This clause follows *A.-G.* v. *Beech* [1899], A. C. 53 ; 68 L. J. Q. B. 130.

THE SCHEDULE.

Particulars of investments subject to the trusts of the Principal Deed.

First Part.

Particulars of the investments hereby appointed.

Second Part.

Particulars of the remaining investments charged with the payment of costs and duties.

No. III.

APPOINTMENT *by a* FATHER *of a fixed* SUM *to a* SON *and* SURRENDER *of the* FATHER'S LIFE INTEREST, *where* DUTIES *are to be paid out of the* APPOINTED MONEY.(*h*)

(*Parties and recitals as in last Precedent.*)

NOW, for effectuating the said desire and in exercise of the power for this purpose conferred by the Principal Deed and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of immediate sum to son.

1. THE Appointor hereby irrevocably appoints that the sum of £—— shall (subject to the provision for setting apart investments to answer part thereof hereinafter contained) forthwith be raised and paid out of the investments mentioned in the Schedule hereto, or any of them, and shall (subject to the payment of the costs of raising the same and of all duties payable in respect thereof) be held IN TRUST for the said E. B. absolutely.

Surrender of life interest.

2. (*As in last Precedent, saying* "sum of money" *for* "investments" *and* "subject to the payments aforesaid" *before the words* "IN TRUST.")

Direction to Trustees as to payment of estate and succession duty.

3.—(1) THE Appointor and the said E. B. hereby direct the Trustees (which expression shall include the trustees or trustee for the time being of the Principal Deed) to commute forthwith the succession duty (if any) payable in respect of the sum hereinbefore appointed, and to set apart and retain unconverted until the expiration of three years from the date hereof, or until the death of the Appointor (which first happens),

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The merger of the life interest discharges the appointed fund from estate duty if the appointor survives for three years after the appointment. The succession duty can be commuted at once.

(*h*) See notes to last Precedent, which deals with the case where the duties are to be paid out of the unappointed fund.

investments to represent so much of the sum hereinbefore appointed (taking the investments set apart at the mesne market price at the date hereof) as may in the opinion of the Trustees be required, if the Appointor dies before the expiration of three years from the date hereof, for discharging or commuting the estate and any other duty, and the costs of raising the same, which will then become payable or be capable of being discharged or commuted in respect of the sum hereinbefore appointed:

Income of retained investments to go to appointee.

(2) The income of the investments hereinbefore directed to be set apart and retained shall, until the investments are applied for the purposes aforesaid, be paid to the said E. B. or the persons deriving title under him.

Surplus of retained investments to belong to appointee.

(3) Subject to the payments aforesaid, the investments hereinbefore directed to be set apart and retained and any money in the hands of the Trustees representing any part of the sum hereinbefore appointed shall, after the expiration of the aforesaid periods (which first elapses), be held In trust for the said E. B. absolutely.

In witness, &c.

The Schedule.

Particulars of investments subject to the trusts of the Principal Deed.

No. IIIa.

MEMORANDUM *to be written at the foot of the above Appointment.*

Sale of investments, payment to appointee of proceeds and retention of other investments for discharging estate duty.

On the —— day of —— the Trustees of the Principal Deed raised the gross sum of £—— by the sale of —— (*name the investments*) comprised in the schedule above and thereout commuted the succession duty payable in respect of the sum appointed by the above Deed and the costs of such sale and commutation, and paid the balance of that sum to the said E. B. (as he hereby acknowledges), and set apart and retained —— (*name the investments*), also comprised in the said schedule, and valued at the date of the said appointment at £—— (making, with the said sum of £—— (*the gross amount raised*), the aggregate sum appointed), for the purpose of discharging any estate or other duty payable in respect of the sum appointed and not already commuted.

(*Signed*) E. B. (*on a receipt stamp*).

No. IIIb.

FURTHER MEMORANDUM *to be written at foot of deed of appointment at the expiration of three years.*

Transfer of stock set apart.

On the —— day of ——, 19— (the above-named A. B. being still living), the Trustees of the Principal Deed transferred the —— (*name the investments*), retained by them in case estate duty should become payable, to the said E. B., as he hereby acknowledges, he having paid the costs of such transfers.(*i*)

(*Signed*) E. B. (*on a receipt stamp*).

No. IV.

RELEASE *by a* FATHER *of his* POWER *of* APPOINTMENT *over a* TRUST FUND *and* SURRENDER *of his* LIFE INTEREST *so as to become* ENTITLED *in* POSSESSION *to a* MOIETY *of the* CAPITAL *as* ADMINISTRATOR *of a* DECEASED CHILD, *and so as to vest the other* MOIETY *in* ANOTHER CHILD.(*j*) VARIATION *where the* RELEASE *only* EXTENDS *to the* SHARE *of the* DECEASED CHILD.

THIS RELEASE AND SURRENDER is made, &c. (*date*), BETWEEN A. B., of, &c. (*father and donee of power*) of the one part, and X., of, &c., and Y, of, &c. (hereinafter called the Trustees), of the other part: WHEREAS :—

Recitals.

(1) This Deed is supplemental, &c. (*as in Prec. II, p.* 230):

(2) to (5) (*Recite death of wife without having concurred with A. B. in exercising power—that there had been two children who attained twenty-one, viz., D. B. and E. B.—death of E. B. intestate, grant of Letters of Administration to A. B., and particulars of Trust Fund by reference to schedule and date of birth of A. B.*):

Variation where estate duty becomes payable.

(*i*) If the appointor dies within the three years, then on his death the memorandum should be varied to show that the investments have been sold, the net proceeds applied in discharge of estate duty, and the balance paid to the appointee.

Releases of powers.

(*j*) L. P. Act, 1925, s. 155, authorises the donee of a power to release it. This release, though it benefits the donee, is valid: *Re Radcliffe* [1892], 1 Ch. 227; 61 L. J. Ch. 186; *Re Somes* [1896], 1 Ch. 250; 65 L. J. Ch. 262; and see preliminary note to this part, p. 226. A married woman, though married before 1883, could, under the old law, release a power by deed unacknowledged: *Re Chisholm* [1901], 2 Ch. 82; 70 L. J. Ch. 533. After 1925 no acknowledgment is required of any deed: *ib.*, s. 167; as to disclaimers by married women: *ib.*, s. 168.

(6) The said A. B. is desirous of executing such release and surrender as are hereinafter contained:

NOW, for effectuating the said desire, THIS DEED WITNESSETH as follows:—

Release of power.

1. THE said A. B. hereby releases the Trust Fund and all other (if any) the property now or which may hereafter become subject to the trusts of the Principal Deed from the power of appointment thereby conferred on him as having survived the said C. B., his wife, as hereinbefore appearing, To the intent that the said power may be absolutely extinguished.

Surrender of life interest.

2. THE said A. B., As Settlor, hereby surrenders unto the Trustees:

ALL THAT the life interest of the said A. B. in the Trust Fund and other property (if any) now subject to the trusts of the Principal Deed, To the intent that the same may be merged in the capital of the Trust Fund and other property, and that the Trustees shall henceforth stand possessed of the Trust Fund and other property aforesaid IN TRUST for the said D. B. and A. B. (as the personal representative of the said E. B., deceased), in equal shares.(k)

IN WITNESS, &c.

THE SCHEDULE.

Particulars of investments now subject to the trusts of the Principal Deed.

Stamps and death duties.

(k) It is conceived that the stamp would be 10s. and *ad valorem* duty on one moiety only of the value of the life interest in property, for no surrender is required in regard to the moiety taken by the father: Fin. (1909-10) Act, 1910, s. 74. It must be seen that all the duties payable on the death of the deceased child are discharged as regards that child's moiety. It is conceived that the Commissioners will, if desired, commute the estate duty as well as the succession duty payable in respect of the surviving child's moiety. If the estate duty is not commuted the trustees must retain a sufficient part of this moiety to answer any estate duty which would become payable if the father dies within three years, see notes to Prec. II, p. 230, *supra*.

Variation where release is only to extend to one moiety.

If the release of the power is to extend only to the moiety of the deceased child and the father intends to preserve his life interest in the other moiety and his right to appoint to issue of his surviving child, then the operative parts will be as follows:—

Release of power of appointment in regard to one moiety.

1. THE said A. B. hereby releases the moiety to which the said E. B., would in default of appointment have been entitled in the Trust Fund and in all other (if any) the property now or which may hereafter become subject to the trusts of the

No. V.

RELEASE *of a* POWER *of* REVOCATION *contained in a* VOLUNTARY SETTLEMENT.(*l*)

THIS RELEASE is made, &c. (*date*), BY A. B., of, &c. (*Releasor*): WHEREAS :—

Settlement.

(1) (*Recite Settlement whereby investments were settled upon trust for A. B. and C. B., his wife, successively for life, and after the death of both in trust for their issue, &c., and power for A. B. to revoke the trusts in respect of the whole or part of the trust fund*):

Death of Settlor's wife.

(2) The said C. B. died on the —— day of ——:

Issue.

(3) There have been two children of the said A. B. and C. B. and no more (namely), D. B. and E. B., born respectively on the —— day of —— and the —— day of ——:

Desire to release power of revocation.

(4) The said A. B. has not exercised the power of revocation reserved to him by the recited Settlement, and he has now agreed to release the same in the manner hereinafter appearing:

Release of power.

NOW THIS DEED WITNESSETH that the said A. B. hereby releases unto the said D. B. and E. B. and the Trustees, and all other persons interested in the Trust Fund and property now or hereafter to become subject to the trusts of the recited Settlement, the power of revocation thereby reserved to the said A. B., To the intent that the Trust Fund and property shall henceforth be held Upon the trusts declared by the recited Settlement, wholly discharged from the said power of revocation.

IN WITNESS, &c.

Principal Deed from the power of appointment thereby reserved to the said A. B. as having survived his wife as aforesaid, To the intent that the said moiety may become absolutely vested in the said A. B. (as the personal representative of the said E. B., or otherwise), free from the trusts and powers of the Principal Deed.

Saving of life interest and power of appointment in regard to the other moiety.

2. NOTHING herein contained shall prejudice or affect the life interest of the said A. B. in the other moiety of the Trust Fund and premises, nor his power to appoint that moiety to or for the benefit of the said D. B. or any issue of his or any one or more of them exclusively of the other or others.

IN WITNESS, &c.

(*l*) See note to last Precedent. Notice of this release should be given to the trustees of the settlement.

No. VI.

REQUEST *by* TRUSTEES *to a* COMPANY *for the* PAYMENT *of* DIVIDENDS *arising from a* TRUST INVESTMENT *to a* BANK.(*m*)

Address of one Trustee.
Date.

The —— Company, Limited.

SIR,

We shall be obliged if you will, until further order, pay all dividends arising in respect of the sum of £—— Stock of the above Company, now standing in our joint names, to the —— Bank at ——.

Yours faithfully,
(*To be signed by all the Trustees*).

The Secretary,
—— Company, Limited.

No. VII.

REQUEST *by* TRUSTEES *to a* BANK *to place* DIVIDENDS *to the credit of a* BENEFICIARY'S ACCOUNT.(*n*)

Address of one Trustee.
Date.

SIR,

We have given instructions for the payment of all dividends arising in respect of the investments mentioned in the Schedule hereto, which are now standing in our joint names, to your Bank, and shall be obliged if you will, until further order, place the same as received to the credit of the account of —— (*the beneficiary*) at your Bank.

Yours faithfully,
(*To be signed by all the Trustees*).

The Manager,
—— Bank.

SCHEDULE.

(*m*) Though companies will register stock, &c., in several names, they will not usually recognise trusts, and accordingly will not pay dividends on investments standing in the names of trustees to a beneficiary. Hence the practice has arisen of requesting the company to pay dividends to the beneficiaries' bank, followed by a direction to the bank to place the dividends to the account of the beneficiary. It should be ascertained whether the particular company has a special form of request.

(*n*) See note to last Precedent.

No. VIII.

NOTICE *to* TRUSTEES *of a* SETTLEMENT *of an* APPOINTMENT *of* PART *of the* TRUST FUNDS.

To ——, the Trustees of a Settlement dated, &c., and made, &c., and to all others whom it may concern.

WE, A. B., of, &c., and C. B., his wife, HEREBY GIVE YOU NOTICE, that by a Deed dated, &c., we have, subject to our respective life interests, appointed a —— share in the [*Husband's*] [*Wife's*] Trust Fund[s] settled by the above-mentioned Settlement to our daughter ——, in contemplation of her marriage with ——. [The appointment will be void if the marriage is not solemnised within six months.]

AS WITNESS our hands this —— day of ——, 19—.

No. IX.

NOTICE *by the* TRUSTEES *of a* SUB-SETTLEMENT *to the* TRUSTEES *of a* PRINCIPAL SETTLEMENT *of the* ASSIGNMENT *of a* SHARE.(*o*)

To ——, the Trustees for the time being of a Settlement (hereinafter called the Principal Settlement), dated the —— day of ——, 19—, and made between, &c., and to all others whom it may concern.

WE HEREBY GIVE YOU NOTICE that, by a Settlement (hereinafter called the Sub-settlement) dated the —— day of ——, 19—, and made between A. B. of the 1st part, C. D. of the 2nd part, and E. F. and G. H. (hereinafter called the Trustees) of the 3rd part (being a settlement made in consideration of the marriage of the said A. B. and C. D. solemnised on the —— day of ——, 19—),

ALL the shares or interests to which the said A. B. was then or might at any time thereafter become entitled in any of the property, subject to the trusts of the Principal Settlement, have

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(*o*) It is usual to send the notice in duplicate and to request that the duplicate shall be returned with an acknowledgment of the receipt of the notice thereon.

Notices in writing; Memorandum in lieu thereof.

The notice must be in writing: L. P. Act, 1925, s. 137 (2); if under *ib.*, s. 138, a trust corporation has been nominated to receive and register notices, then the notice must be given to the corporation. If there are no trustees to whom a valid notice can be given, a memorandum of the transaction must be endorsed on the instrument creating the trust: *ib.*, s. 137 (4) to (6); 1 Wolst. and Cherry, 11th ed., 363–65.

been assigned by the said A. B. to the Trustees, to be held Upon the trusts of the Sub-settlement.

Dated this —— day of ——, 19—.

(*Signatures of the Trustees of the Sub-settlement.*)

No. X.

DIRECTION *by* HUSBAND *and* WIFE *whose consent is made requisite to any change of* INVESTMENT *to* SELL INVESTMENTS *and to* INVEST *the* PROCEEDS *on* MORTGAGE *of* LAND *or in the* PURCHASE *of some other* INVESTMENT.

To L. M. and N. O. (*Trustees of Settlement*).

Direction to Trustees to sell out stock and invest money on mortgage or other investments.

WE, A. B., of, &c., and C. B., his wife, hereby request that under the power for this purpose conferred on you by a Settlement dated the —— day of ——, 19— (being the settlement made on our marriage), you will forthwith sell the investments mentioned in the First Schedule hereto standing in your names and invest the net proceeds [*or*, by the sale of a sufficient part of the sum of £1,000 Consolidated £2 15*s*. per cent. Stock, now standing in your names as trustees of the said Settlement, raise the net sum of £—— sterling, and invest the same on mortgage of the farm and lands called the —— Farm, situated in the Parish of ——, in the County of ——, belonging to E. F., of, &c., at interest at the rate of £4 per cent. per annum] in the purchase of the investments mentioned in the Second Schedule hereto and as nearly as may be in the proportions mentioned in that Schedule.

AS WITNESS our hands this —— day of ——, 19—.

FIRST SCHEDULE.

Particulars of investments to be sold.

SECOND SCHEDULE.

Particulars of investments to be purchased.

(*To be signed by A. B. and C. B.*)

No. XI.

DIRECTION *by* HUSBAND *and* WIFE *to* TRUSTEES *to make immediate payment of* PART *of a* CHILD'S *expectant* SHARE *pursuant to a* POWER *of* ADVANCEMENT.(*p*)

To E. F. and G. H. (*Trustees of Settlement*).

WE, A. B., of, &c., and C. B., his wife, hereby request that,

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(*p*) For the statutory power of advancement see T. Act, 1925, s. 32.

under the power for this purpose contained in [under the statutory power of advancement applicable to] a Settlement dated, &c., and made, &c. (being the settlement made on our marriage), you will forthwith raise the sum of £—— out of the [Husband's *or* Wife's] Trust Fund settled by the said Settlement, and pay the same to our daughter ——, as an advancement for her benefit in view of the marriage now intended to be shortly solemnised between her and —— [*or* will forthwith raise the sum of £—— out of the [Husband's *or* Wife's] Trust Fund settled by the said Settlement and apply that sum for the advancement and benefit of our son ——, in manner following (that is to say) ——].

AS WITNESS our hands this —— day of —— 19—.

A. B. and C. B. (*husband and wife*).

No. XII.

DEED *by* TRUSTEES *for* SALE, *delegating* POWERS *to the* TENANT *for* LIFE *of the proceeds of sale*.(q) (*Legal Estate.*)

Parties.

THIS POWER OF ATTORNEY is made, &c. (*date*), BETWEEN P. T., of, &c., Q. T., of, &c., R. T., of, &c., and S. T., of, &c. (hereinafter called the Trustees), of the one part, and T. L., of, &c. (hereinafter called the Donee), of the other part: WHEREAS:—

Conveyance on trust for sale.

(1) By a Conveyance, dated, &c., and made, &c., certain freehold and leasehold properties were conveyed to the Trustees IN TRUST for the Donee until the solemnisation of his marriage with the said S. B. (which was duly solemnised on ——), and thereafter UPON TRUST to sell the same as therein mentioned,

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Power to delegate.

(q) Under L. P. Act, 1925, s. 29, the powers of and incidental to leasing, accepting surrenders of leases and management conferred on trustees for sale, either by s. 28 or otherwise, may, until sale of the land, be revocably delegated by writing signed by them to a tenant for life of the proceeds of sale, and in favour of a lessee this will be sufficient evidence that the donee is a person to whom the powers may be delegated; this keeps the trusts off the title to the land. The production of the power of attorney is sufficient evidence that it has not been revoked. The powers must be exercised in the names and on behalf of the trustees; they will not be liable for the acts, &c., of the donee, but he will be in the position of a trustee. If they refuse to delegate the court may direct them to do so: *ib.*, s. 30.

Filing of powers of attorney.

All powers of attorney conferring power to deal with land, or the material parts thereof, must be filed at the Central Office or, in the case of registered land, at the Land Registry: *ib.*, s. 125 (1). A purchaser is entitled to a copy of the power, or of the material parts thereof, unless the power is handed over: *ib.*, s. 125 (2), as amended by L. P. (Amend.) Act, 1926, Sched.

Statutory declaration.

He will be able to have the copy converted into an office copy. The usual statutory declaration as to execution will be required at the Central Office.

and to stand possessed of the net proceeds of sale and other capital money arising therefrom, and the net rents and profits until sale Upon the trusts declared concerning the same by a Settlement of even date therewith under which the Donee (being a person of full age) is now beneficially entitled to the net rents and profits of the premises during his life: [*Add, if the case, see Form No.* 56, *p.* 159, *supra*, " And the said Conveyance conferred certain powers in addition to those conferred by section twenty-eight of the Law of Property Act, 1925, and it was thereby declared that the powers of delegation conferred by section twenty-nine of the said Act, should, for the purposes thereof and until sale of the land, apply to all the statutory powers relating to land as thereby extended, but with a provision that "—(*set out the special provisions, if any*)].

Request to delegate.

(2) The Donee has requested the Trustees in exercise of their statutory powers [as extended as aforesaid] to execute such power of attorney as is hereinafter contained, which they have agreed to do in manner hereinafter appearing:

Operative parts.

NOW, in exercise of the powers for this purpose conferred by section twenty-nine of the Law of Property Act, 1925 [as extended as aforesaid] and of all other powers, THIS DEED WITNESSETH as follows:—

Delegation of powers.

1. The Trustees hereby delegate to the Donee all the powers of and incidental to leasing, accepting surrenders of leases and management conferred on them by the Law of Property Act, 1925, or otherwise [Together with the additional or other powers which by virtue of the said Conveyance or otherwise they have power to delegate] in relation to the real estate and chattels real from time to time held by them on trust for sale under the provisions of the said Conveyance and the Settlement of even date herewith, or either of them, and hereby appoint the Donee to be their attorney in their names and on their behalf to exercise the said powers or any of them, and for that purpose to execute and do all deeds, acts and things which may be requisite.

Capital money to be paid to the Trustees.

2. Nothing herein contained shall authorise the Donee to complete any sale or other transaction in respect of which capital money arises or to give any receipt for capital money.

Power of revocation.

3. The Trustees or other the trustees or trustee for the time being of the said Settlement and of any conveyance on trust for sale subsisting for the purposes thereof shall have power at any time by writing signed by them, to revoke this power of attorney, and thereupon notice of the revocation shall be given

to the proper officer at the Central Office [at the Land Registry] where this deed is to be filed, and any office copy thereof in the possession of the Donee shall be delivered up to the Trustees.

Acknowledgment.

4. THE Trustees hereby acknowledge the right of the Donee to production of the recited Conveyance and the documents mentioned in the Schedule hereto, and to delivery of copies thereof.

IN WITNESS, &c.(r) (*Add Schedule of documents relating to the legal estate in the land.*)

(r) *Semble*, apart from an express provision, when new or additional trustees are appointed, a new power of attorney will be required. If an acknowledgment of the right to production of the material deeds is given, the donee of the power can give an acknowledgment of a right to the production of the office copy, and this would give the lessee, &c., with whom he is dealing a right to production of the other deeds. The powers of management referred to include those given by S. L. Act, 1925, s. 102.

Powers of management.

DIVISION II.

SETTLEMENTS (REAL) AND DISENTAILING ASSURANCES.

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SECTION I.

Recitals.

No. 1.

Agreement for marriage.

A marriage has been agreed upon and is intended to be solemnised between the Husband and Wife. [*In the Trust instrument recite the Vesting Deed of even date.*]

No. 2.

Agreement for Settlement on marriage.

UPON the treaty for the said intended marriage it was agreed that such Settlement should be executed as is hereinafter contained.

No. 3.

Agreement for Settlement (not on marriage).

THE said —— (*father*) and —— (*son*) have agreed to execute such Settlement as is hereinafter contained.(*b*)

Scheme for avoiding stamp on resettlements.

Settlements by way of trust for sale.

(*b*) In view of the stamp imposed by the Fin. (1909-10) Act, 1910, s. 74, and the possible costs of valuing the land, a resettlement between father and son will now, as regards the land, be generally postponed till the marriage of the son, but the capital money and investments can be settled as land, and the land may be settled later. The *ad valorem* stamp will be borne by the trust instrument.

As entailed interests can be created in personal estate: L. P. Act, 1925, s. 130, the trusts formerly applicable to realty settlements can now be used in settlements made by way of trust for sale. In a few cases slight adaptations of the trusts may be expedient, but as a whole the forms (so far as they create beneficial interests) are interchangeable. No S. L. Act trustees are required where the land is held on trust for sale, nor any vesting instrument.

SECTION II.

Operative Parts.

No. 4.

Commencement of operative part.

NOW, in pursuance of the said agreement [and in consideration of the said intended marriage], THIS DEED WITNESSETH and it is hereby declared as follows :—(*c*)

No. 5.

Declaration of trust of freeholds, enfranchised lands and leaseholds (on marriage) in a vesting deed where the settlor takes the first life interest.

THE Husband (*or other settlor*), As Settlor, hereby declares that—

FIRST, All and singular the mansion house and park known as ——, advowsons, perpetual rentcharges (including tithe rentcharges), lands, buildings, minerals and other freehold properties and rights mentioned in the —— Schedule hereto and as regards [surface] land more particularly delineated on the plans hereto and thereon coloured ——,

SECONDLY, All and singular the enfranchised lands, buildings and rights mentioned in the —— Schedule hereto and as regards lands more particularly delineated on the plans hereto and thereon coloured —— (which properties were formerly copyhold of the manors of —— and ——),

AND THIRDLY, All and singular the premises respectively comprised in and demised by the Leases [and Underleases] mentioned in the —— Schedule hereto :

ARE vested in the Husband (*or other settlor*) as to the said freehold properties and enfranchised lands in fee simple (but as to the enfranchised lands subject to the manorial incidents and rights of the lords of the said manors affecting the same) and as to the said leasehold properties for the residue of the terms and at the rents mentioned in the —— Schedule hereto and subject to the lessee's covenants and conditions [and as to such of the premises as are affected thereby, subject to the incumbrances mentioned in the —— Schedule hereto] Upon the trusts declared concerning the same by a Trust Instrument bearing even date and intended to be executed contemporaneously herewith and made between the same parties and in the same order as this deed or upon such other trusts as the same ought to be held from time to time.

Essential Forms in a realty settlement.

(*c*) The essential Forms in realty settlements are, first, the vesting instrument in which the S. L. Act trustees will be named, and which will set out any additional powers relating to the land and give the name of the person having power to appoint new trustees ; and secondly, the trust instrument in which all the trusts will be declared, see S. L. Act, 1925, 1st Sch., Forms 2 and 3.

No. 5A.

Conveyance where the settlor does not take the first life interest (vesting deed).

The Settlor, As Settlor, hereby conveys and assigns unto the Husband (*or other the person who is to take the first life interest*) (*Parcels as in last Form*).

To hold unto the Husband (*or other tenant for life*), as to the said freehold properties, &c. (*continue as in last Form*).(*d*)

No. 5B.

Commencement of trusts in a trust instrument.

The —— (*tenant for life*) hereby agrees that he will hold the properties and rights comprised in the Vesting Deed [*the recited deed of even date will in the recital be defined as* "the Vesting Deed"] [and the several properties of which the —— is registered as proprietor as aforesaid]:

Upon the trusts following, namely—(*continue Form No.* 7).

No. 6.

Appointment of land in a trust instrument by way of resettlement.

In exercise of the power for this purpose conferred by the Disentailing Assurance and of all other powers, the Father and Son, As Settlors, hereby appoint that

All the lands and incorporeal properties comprised in the —— Vesting Deed and all other the real estate and chattels real whatsoever which may be subject to the joint power of appointment conferred by the Disentailing Assurance, shall henceforth remain and be held [until the said intended marriage shall be solemnised, Upon the trusts and subject to the powers and provisions which immediately before the execution hereof were subsisting or capable of taking effect with respect to the premises, But after the solemnisation of the said intended marriage] (*take Form No.* 7, *omitting the first sentence in square brackets, or Form No.* 7A, *as the case may require*).

Variation where on marriage.

Incumbrances to be referred to.

Trustees of compound settlements.

(*d*) In the vesting instrument only the incumbrances which cannot be over-reached (*e.g.*, legal mortgages or legal rentcharges) should be mentioned. All family charges (whenever created) will be capable of being over-reached and will be mentioned and generally re-limited by the trust instrument. These family charges can be over-reached because the S. L. Act trustees of the compound settlement will be the acting trustees: S. L. Act, 1925, s. 1. There should be no difficulty in ascertaining who are the trustees of the compound settlement. If there are S. L. Act trustees of the instrument creating the charge, they will also be the trustees of the subsequent instruments: *ib.*, s. 31; they or their successors remain S. L. Act trustees so long as the settlement subsists: *ib.*, s. 33. If there are no S. L. Act trustees of the prior instrument, and no trustees of the compound settlement have been appointed by the court, then the S. L. Act trustees of the instrument, under which there is a tenant for life or statutory owner, will be the trustees of the compound settlement till trustees are appointed of the prior instrument or of the compound settlement: L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, s. 31. Though a power of sale may have ceased to be exercisable before 1926, the successors in office of the trustees become S. L. Act trustees: *ib.*, s. 33 (1), see the words "at any time."

SECTION III.

Limitations of Land.

No. 7.

Preliminary declaration of trusts (in a trust instrument); life interests to be sans waste, &c. [release of powers of charging].

[UPON TRUST for —— (*the Settlor*) until the solemnisation of the said intended marriage and thereafter] Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same, and so that all interests for life shall be without impeachment for waste [and that where limited to a female shall be without power of anticipation during any coverture (*e*)] [provided that each tenant for life shall be liable to insure all buildings (except farm buildings) (*f*) and mining plant to an amount equal to at least three-fourths of the amount required to rebuild or replace the same in case of total destruction and either to apply the insurance money in reinstating the buildings or as capital money arising from the premises hereby settled] [and To the intent that all powers of charging given to the said —— (*tenant for life*) by the Settlement of 19— shall be hereby discharged (*g*)] (that is to say):—

No. 7A.

Limitations (in a trust instrument) to devolve with the land directed to be purchased and settled with capital money previously settled.

UPON the trusts and subject to the powers and provisions which, under the recited Resettlement of 19— or any power of charging therein contained, are now subsisting or capable of taking effect with respect to the freehold land thereby directed to be purchased and settled or which would have been subsisting or capable of taking effect if such land had been purchased and settled, but not so as to increase or multiply charges or powers of charging and so that the trustees or trustee for the time being of the Resettlement of 19— for the purposes of the Settled Land Act, 1925, shall be the trustees or trustee hereof for those purposes. (*h*)

(*e*) These words in square brackets avoid repetition where several life interests are limited.

(*f*) See *Re Quicke* [1908], 1 Ch. 887; 77 L. J. Ch. 523; *Gaussen* v. *Whatman* (1905), 93 L. T. 101; article in (1910) 54 Sol. J. 356; and the *dictum* in *Re Bladon* [1911], 2 Ch. at p. 354; 81 L. J. Ch. 117; T. Act, 1925, s. 20.

Discharge of powers of charging.

Increase of portions.

(*g*) On a resettlement the powers of charging given by the previous settlement should still be discharged and new powers given in their place; this is not so important as it was under the old law, for in all resettlements the trustees of the compound settlement must act. If the powers to charge portions in favour of the younger children of the tenant for life are to be increased, it is better to give him a general power to raise the additional money to avoid the extra succession duty which would be payable if a term were limited for their benefit by their brother, the tenant in tail.

Settlements by reference.

(*h*) This trust creates a settlement by reference to the capital money settlement. The S. L. Act trustees of the money settlement become the trustees of the subsequent settlement of the land unless the latter appoints S. L. Act trustees or the court makes an appointment: S. L. Act, 1925, s. 32.

No. 7B.

The like in a vesting deed.

UPON the trusts declared (by reference) concerning the same by a Trust Instrument bearing even date with, but intended to be executed contemporaneously with this deed, and made between the same parties and in the same order or upon such other trusts as the same ought to be held from time to time. [*A new vesting deed is not required* (*save for the purposes of additional powers*) *where there is a subsisting vesting deed and the same tenant for life is to act as trustee of the settled land ; pending a new deed an endorsement as to additional powers, if any, relating to land, may be made on the subsisting vesting deed.*]

No. 8.

Equitable rent-charge(*i*) for pin-money (trust instrument).

UPON TRUST that the Wife may, during the joint lives of herself and the Husband, receive out of the premises (other than advowsons) by way of pin-money, without power of anticipation during any coverture, the yearly rent-charge of £——, to commence from the solemnisation of the said intended marriage [*or* from the death of the said —— (*a prior tenant for life*)] and to accrue from day to day, but to be paid without any deduction (*j*),

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Remedies for recovery of rent-charges.

(*i*) The remedies for the recovery of rentcharges are given by L. P. Act, 1925, ss. 121 and 122 ; they are exercisable whether the rentcharge is created under a power in an instrument made before or after 1882, unless that instrument or the document exercising the power otherwise directs. Under s. 121 (4) only an equitable term can be created by a woman entitled to pin money or a jointure, as her rentcharge is not held for a legal estate, but the tenant for life (being the trustee of the legal estate) must give legal effect to mortgages created for raising arrears : S. L. Act, 1925, s. 16.

" Without any deduction."

Land tax.

(*j*) Rentcharges, though no rate or local assessment is payable in respect of them, are subject to deduction on account of land tax (38 Geo. 3, c. 5, ss. 4, 5, 24), unless expressly exempted as above, see note to *Gwynne* v. *Heaton* (1778), 1 Bro. C. C., at p. 4, and to 3 Dav. Convg., 3rd ed., 313.

Income tax.

The words " without any deduction " are not sufficient to make a rentcharge payable under a deed free of income tax, the deed being a contract : Income Tax Act, 1918, All Schedules Rules, r. 23, and see *Floyer* v. *Bankes* (1863), 32 L. J. Ch. 610, 612 ; *A.-G.* v. *Shield* (1858), 3 H. & N. 834 ; 28 L. J. Ex. 49 ; *Re Peck* [1921], 2 Ch. 237 ; 90 L. J. Ch. 491 ; *Re Gretton* [1923], 1 Ch. 77 ; 92 L. J. Ch. 49 ; *cf. Re Gordon* [1924], 1 Ch. 146 ; 93 L. J. Ch. 187 ; nor sufficient to free an annual sum given by a Will from income tax : *Gleadow* v. *Leetham* (1882), 22 Ch. D. 269 ; 52 L. J. Ch. 102 ; neither will the words " free of deduction " : *Re Musgrave* [1916], 2 Ch. 417 ; 85 L. J. Ch. 639 ; unless there is express mention of " taxes " : *Re Bannerman* (1882), 21 Ch. D. 105 ; 51 L. J. Ch. 449 ; *Re Buckle* [1894], 1 Ch. 286 ; 63 L. J. Ch. 330. In Wills the words " clear of income tax " should be used if that is the intention, the words " clear annuity " will not suffice : *Re Loveless* [1918], 2 Ch. 1 ; 87 L. J. Ch. 461 ; nor will " free of all duties " : *Re Saillard* [1917], 2 Ch. 401 ; 86 L. J. Ch. 749 ; and see *Re Cain* [1919], 2 Ch. 364 ; 88 L. J. Ch. 513 ; *Re Cooper*, 88 L. J. Ch. 105 ; *Re Janes* [1918], 2 Ch. 54 ; 87 L. J. Ch. 454.

Super tax.

A gift in a will of an annual sum clear of all deductions, including income tax, was held to free the annuitant from liability for super tax : *Re Crosse* [1920], 1 Ch. 240 ; 89 L. J. Ch. 145.

Where the tax is payable out of residue, the residue bears such proportion of the total super tax payable as the annuity, with the income tax thereon except for income tax, by equal quarterly payments, the first thereof to be made at the end of three months from the solemnisation of the marriage [*or* from the death of the said ——] if the Wife and Husband be both then living. And subject to the said rent-charge.

(*Form No.* 31, *p.* 280, *enabling the Wife to release the rentcharge, should be added later in connexion with this Form.*)

No. 9.

Equitable rentcharge for son during the lives of himself and his father in a resettlement (trust instrument). (*k*)

Upon trust that the said —— (*son*) may during the joint lives of himself and the said —— (*father*) receive out of the premises (other than advowsons) the yearly rentcharge of £——, to commence from the date hereof and to accrue from day to day, but to be paid without any deduction,(*l*) except in respect of

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added, bears to the total amount of the annuitant's income assessed for the purposes of super tax: *Re Doxat* (1920), W. N. 262. Where an annuitant, whose tax has been paid out of residue, obtains relief by repayment of income tax, the owner of the residuary estate is entitled to such proportion of the sum repaid as the annuity bears to the total income of the annuitant: *Re Pettit* [1922], 2 Ch. 765; 91 L. J. Ch. 732.

Estate duty.

The words "without any deduction" or "free from all deductions" exempt the jointress from contributing to estate duty; *Re Parker-Jervis* [1898], 2 Ch. 643; 67 L. J. Ch. 682; or the old settlement estate duty (if any payable): *Re Maryon-Wilson* [1900], 1 Ch. 565; 69 L. J. Ch. 310; *Re Earl of Egmont* [1912], 1 Ch. 251; 81 L. J. Ch. 250; and as to what are sufficient words of exemption, see also *Re Lord Fitzhardinge* (1899), 80 L. T. 376; *Re Rayer* [1903], 1 Ch. 685; 72 L. J. Ch. 230; *Re Turnbull* [1905], 1 Ch. 726; 74 L. J. Ch. 438. But if the estate is in possession, and the only life interest after the death of the husband is the jointure to the wife, the latter duty is not payable: Fin. Act, 1894, s. 5 (1); Fin. Act, 1914, s. 14; and see *Re Snape* [1915], 2 Ch. 179; 84 L. J. Ch. 803; *Re Stoddard* [1916], 2 Ch. 444; 86 L. J. Ch. 29; *Re Parker* [1917], 86 L. J. Ch. 766; *Re Eve* [1917], 1 Ch. 562; 86 L. J. Ch. 396; *Re Wedgwood* [1921], 1 Ch. 601; 90 L. J. Ch. 322; *Re Sutherland* [1922], 2 Ch. 782; 92 L. J. Ch. 113.

Succession duty.

Where succession duty is payable, it has been held that the words "without any deduction in respect of any *tax*" exempt from the duty: *Floyer* v. *Bankes* (1863), 3 De G. J. & S. 306; 33 L. J. Ch. 1; *cf. Re Parker-Jervis, supra*; *Re Saunders* [1898], 1 Ch. 17; 67 L. J. Ch. 55; *Re Turnbull, supra*.

Where a jointure is limited by or charged under a power in the Will of a person who died on or after the 1st July, 1888, succession duty is payable under the Customs and Inland Revenue Act, 1888, s. 21 (2).

Rent-charge created under power.

A rentcharge created under a power which authorised it to be charged free from deductions is so free notwithstanding that it is not expressed to be free in the deed of charge: *Re Cadogan's S.* (1911), 56 Sol. J. 11.

(*k*) Sometimes a rentcharge is given for the life of the son, but it is conceived that this would not save duty. To effect this it would be necessary to limit the rentcharge to the son and the persons deriving title under him during the residue of the life of his father. This Form is for use in a resettlement where the son is to be provided for during the joint lives of his father and himself. It will precede the father's life estate. The words at the end enable the father to increase the rentcharge on the son's marriage without demising his life estate.

(*l*) See notes to last Form.

income tax, by equal quarterly payments, the first thereof to be made at the end of three months from the date hereof, if the said —— and —— (*father and son*) shall be both then living [Provided that the said —— (*father*) may by deed, revocable or irrevocable, from time to time appoint that the said yearly rentcharge so payable to the said —— (*son*) shall during the residue of the joint lives of the said —— and —— (*father and son*), or for any less period, be increased by such amounts as the said —— (*father*) shall in his discretion appoint], And subject to the yearly rentcharge [from time to time] payable to the said —— (*son*).

No. 10.
Term for the upkeep of policies (trust instrument).

Upon trust for the Trustees for the term of two hundred years from the date hereof [*or if the term is to be confined to policies settled by the settlor*, "ninety-nine years from the date hereof, if the said —— (*settlor*) shall so long live"] without impeachment for waste Upon the trusts hereinafter declared concerning the same,(*m*) And subject to the said term,

No. 11.
Life interest (trust instrument). (*n*)

Upon trust for the Husband during his life[without impeachment for waste (*o*)], With remainder

No. 12.
Restoration of life interest (trust instrument). (*p*)

Upon trust for the said —— (*tenant for life under previous settlement*) during his life by way of restoration or continuation of his life interest under the recited [Will] Settlement Together

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(*m*) For trusts of the term, see Form No. 23 or 23a, p. 267–68. If used, the above term should precede the settlor's life estate.

Term for discharging incumbrances on life estate.

If a term is required for paying off incumbrances on the life estate (see Form No. 24, p. 269), it should be limited for 500 years certain at least.

Protected life interests and discretionary trusts.

(*n*) For forms creating protected life interests and discretionary trusts, see Forms in Wills (Real), *infra*.

(*o*) The words in brackets are not required if Form No. 7 is used. A tenant for life is not liable for permissive waste: *Re Cartwright* (1889), 41 Ch. D. 532; 58 L. J. Ch. 590; but though made unimpeachable for waste in general terms, this does not confer a power to commit equitable waste: L. P. Act, 1925, s. 135; 1 Wolst. & Cherry, 11th ed., 357.

Death duties.

(*p*) Under the old practice, if probate or account duty as respects personal estate, or estate duty as respects real or personal estate, had previously been paid under the prior settlement, then no further estate duty was payable under that settlement till the death of a tenant in tail, but if the tenant for life took a new life estate, then it was thought that estate duty might be claimed on his death, see Austen-Cartmell, 5th ed., 3, 53, 77, 78, 183. Having regard to the decision in *Parr* v. *A.-G.* [1926], A. C. 239, it seems doubtful, even though the old life interest is kept on foot, whether duties can be thereby saved. Having rightly over-ruled *Re Constable's S. E.* [1919], 1 Ch. 178; 88 L. J. Ch. 89, it is difficult to see how a resettlement can affect the duties payable on the death of the tenant for life if he retains his original life interest.

Statutory power to restore life interests, &c.

Under S. L. Act, 1925, s. 22, a relimitation in a disentailing assurance of the subsisting trusts (subject to any interests or powers thereby created) with all statutory and other powers annexed to or capable of taking effect during the continuance of such life interest (other than and except the powers of charging hereby [or by the Disentailing Assurance] expressly released) With remainder

No. 12A.

Principal beneficiary under a discretionary trust to be the statutory owner during the subsistence of a discretionary trust (trust instrument).

(1) During the subsistence of the discretionary trust next hereinafter declared the —— (*tenant for life*) shall have and may exercise in reference to the premises hereby settled all the powers which are by the Settled Land Act, 1925, or any other statute conferred on a tenant for life in possession of land without impeachment of waste [including any powers which would have been exercisable by him if his life interest under the recited —— (*will or settlement*) had been hereby restored] and so that the —— (*tenant for life*) shall be the statutory owner for the purposes hereof during the subsistence of the said trust.(*q*)

Discretionary trust with power for trustees to authorise beneficiary to act as their attorney.(*r*)

(2) UPON TRUST for the Trustees during the life of the —— (*tenant for life*) without impeachment for waste, and so that the Trustees shall enter into and during the life of the —— (*tenant for life*) continue in possession or receipt of the rents and profits of the premises and exercise all powers in reference thereto (other than the powers hereinbefore conferred on the —— (*tenant for life*), and with power (subject to revocation)

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does not for the purposes of that Act "and otherwise" create any new interest.

Additional powers under resettlement.

A relimitation in a resettlement of a prior life interest (subject or not as above) does not for the same purposes create a new life interest.

In addition to the powers exercisable in respect of the former life interest, the tenant for life (whose interest is restored) is capable of exercising all such further powers as he could have exercised under the resettlement if he had been entitled under the resettlement only: *ib.*, s. 22 (2). On this account it is expedient to restore the life interest, and see *ib.*, ss. 108—9. There is no longer any objection to the additional powers being exercised so as to overreach prior family charges, for in all cases capital money will be paid to the S. L. Act trustees of the compound settlement or into court: *ib.*, s. 1; also s. 75 (1); *Re Cowley* (1926), W. N. 202. By para. 8 of the 4th Sch., *ib.*, s. 22 is made retrospective.

Retrospective

Statutory owners.

(*q*) Under S. L. Act, 1925, s. 23 (1), where there is no tenant for life (*e.g.*, by reason of a discretionary trust or pending a contingency) the settlement can confer the powers on a person of full age who then becomes "statutory owner": *ib.*, s. 117 (1) (xxvi); if the powers are not expressly conferred on a person of full age then the S. L. Act trustees become the "statutory owners." A statutory owner has an inalienable right to have a vesting instrument made in his favour: *ib.*, s. 106 (1) (a).

Right to vesting instrument.

Effect of discretionary trust.

Power to pay on policies.

(*r*) Where this discretionary trust is used, the tenant for life will not be in a position to borrow money on his life estate coupled with a policy. If it is desired to give him power (see Form No. 26A or 26B) to obtain money for his own use, then power may be given to him to require the trustees to pay from time to time to delegate the right to enter into possession or receipt of the rents and profits of the premises and generally manage the same to the —— (*tenant for life*) as attorney of the Trustees and shall pay the net income of the premises (after payment thereout of all rents, rates, costs of insurance, repairs, management and all other outgoings which in the opinion of the Trustees are properly payable out of income) to or for the maintenance, support or otherwise for the benefit of all or any one or more exclusively of the other or others of the —— (*tenant for life*) and his wife and issue for the time being in existence as the Trustees in their absolute discretion, without being liable to account for the exercise of such discretion, may think fit and so that during the subsistence of any power of attorney given by the Trustees to the —— (*tenant for life*) the Trustees shall not be liable for any acts or defaults of the —— (*tenant for life*) With remainder after the death of the —— (*tenant for life*), &c.

Protectorship.

(3) In this deed, notwithstanding the discretionary trust aforesaid, expressions referring to a tenant for life include the said ——, who shall, as tenant for life, remain and be the protector of the settlement as if his life interest had been restored.(*rr*)

No. 13.

Jointure rentcharge (trust instrument). Variation where the

UPON TRUST that the Wife, if she survives the Husband, shall [in substitution for the yearly rentcharge of £—— limited to her by the recited — —(*s*)] receive out of the premises during

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to him out of capital money amounts equal to the full value of policies on his life which he assigns to them, the premiums being made a charge on the rents and income arising during his life. Thus the tenant for life, instead of paying the premiums and interest on the mortgage money, merely pays the premiums and loses the income on the investments sold out.

Discretionary trust in a resettlement.

When a tenant for life is resettling he would object to the statutory powers being vested in the trustees, but if they are reserved to him then, for special reasons, he may agree to create a discretionary trust during his lifetime.

When discretionary trust should be in a separate deed.

Where (see Form No. 12) it is desirable to restore the life interest by the resettlement, then the father may, pursuant to a bargain with his son, assign his life interest to the trustees on discretionary trusts by a separate deed; the assignment would not prejudicially affect his statutory powers: S. L. Act, 1925, s. 104.

Special protectors.

(*rr*) Special protectors can no longer be appointed: L. P. Act, 1925, 7th Sch., repealing F. & R. Act, 1833, s. 32.

(*s*) If a new rentcharge is given, the following provision may, unless the wife joins to release her original charge, be added at the end of the Form:—

No. 13A.

Provision requiring release of a rent-charge.

PROVIDED that if the Wife survives the Husband, then the Wife shall, within such time after the death of the Husband as the Trustees may permit, execute at the cost of the trust premises such release of the said yearly rentcharge limited to her by the recited —— as the Trustees may reasonably require, the residue of her life (*t*) the yearly rentcharge of £——, to commence from his death and to be considered as accruing from day to day, but to be paid without any deduction [except in respect of death duties (*u*)] by equal half-yearly payments, the first payment thereof to be made at the end of six months from his death if the Wife shall then be living,(*v*) And subject to the said rentcharge.

jointure is in substitution for a prior rentcharge.

(*Form No.* 31, *p.* 280, *enabling the Wife to release the rent-charge, should be used in connexion with this Form if she is restrained from anticipation.*)

No. 14.

Term to secure portions (trust instrument).

Variation where the term is in substitution for another.

UPON TRUST for the Trustees [*or where a separate set of Trustees are to take the term, say*:—UPON TRUST for the Portion Trustees (*w*)] for a term of —— years to commence from the death of the Husband without impeachment for waste on the trusts hereinafter declared [and so that the term hereby limited shall be in substitution so far as may be for the portions term of —— years limited by the recited ——] [and that the trustees or trustee for the time being of that term shall, as soon as such trustees or trustee can lawfully do so, at the cost of the trust

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and shall accept the yearly rentcharge hereby limited to her in substitution therefor, And subject to the said rentcharge hereby limited (*go to next limitation*).

Whether or not the jointress releases her original charge, it will be overreachable by the tenant for life for the time being, as trustees of the compound settlement, if there is one, will always be employed. Still, it is convenient that all the trusts should be declared by the last trust instrument.

Family charges overreachable.

If the wife is not restrained from anticipation, then she can join with her husband in the resettlement and release the original rentcharge without acknowledging the deed; in this case the above proviso will not be required.

When wife may join and release.

(*t*) It used not to be the practice to limit a jointure rentcharge to the wife without power of anticipation, though it was always capable of alienation by her by deed acknowledged with the concurrence of the husband. Now under the M. W. P. Acts it becomes her separate property, and can be disposed of by her alone; this does not seem to be a sufficient reason for giving the rent-charge without power of anticipation; but where that is the intention, see Form No. 8, also Form No. 31. As to the power for the Court to bind the interest of a married woman restrained from anticipation: L. P. Act, 1925, s. 169.

Restraint on anticipation.

(*u*) The words in brackets should be used when the rentcharge is not to be free from death duties. As to the method of contributing to estate duty, see *Re Parker-Jervis*, cited in note to Form No. 8, p. 251, where the effect of the words "without any deduction" is discussed.

(*v*) If the proviso requiring a release to be executed is used it will come in here.

(*w*) Personal representatives are not mentioned; they take the term without being specially named. For trusts of the term, see Form No. 22, p. 264.

Executors, &c., omitted.

premises, execute such release of the original term as the Trustees may reasonably require and accept the term hereby limited in substitution therefor,(x)] And subject thereto,

No. 15.

Limitations in marriage settlement (trust instrument).

Sons in tail male and in tail.

Daughters tenants in common in tail.

UPON TRUST for the first and other sons of the said intended marriage successively according to seniority in tail male, with remainder UPON TRUST for the same sons successively according to seniority in tail general, with remainder (subject to the statutory trust for sale) (xx) UPON TRUST for all the daughters of the said intended marriage in equal shares as tenants in common in tail general, with cross remainders between them as to accruing as well as original shares in tail general, and if there shall be but one such daughter, then as to the entirety UPON TRUST for such only daughter in tail general,(y) With remainder

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Release of a portions term.

(x) If the younger children taking under the original term are not all *sui juris*, and the trustees of that term have not been given a power to release it, the release may have to be postponed, but see T. Act, 1925, s. 15 (d). If the portions are slightly increased and the security is sufficient, the trustees can safely join in the re-settlement to release the original term because it will be for the benefit of the younger children; a trustee mortgagee can always release his security and accept another on the ground that he might otherwise be paid off. If the portions are to be largely increased, the father may be given a general power to raise the money so as to save any question arising as to extra succession duty, though the Inland Revenue do not now, it seems, claim a higher rate for the additional portions.

Portion terms take effect in equity.

Though the original portions term, created before 1926, may have been a legal term, it will be converted into an equitable term by the vesting deed: S. L. Act, 1925, 2nd Sch., para. 1 (6), as amended by L. P. (Amend.) Act, 1926, Sch., but without prejudice to legal mortgages of the term.

Settlements *inter vivos*.

Settlements *inter vivos*, made after 1925, must be effected by two deeds, a vesting deed and a trust instrument, and if effected in any other way, will not operate to transfer or create a legal estate: S. L. Act, 1925, s. 4 (1).

By the vesting deed the land is to be conveyed to the tenant for life: *ib.*, ss. 4 (2), 5; while the trust instrument is to declare the trusts, including trusts creating terms: *ib.*, s. 4 (2), 1st Sch., Form No. 3.

Portion terms.

An instrument purporting to create a legal term for family purposes could only take effect as part of a settlement: *ib.*, s. 1 (1) (v), hence, if not created by a vesting instrument, could only create an equitable term.

Giving legal effect thereto.

Legal effect must, however, be given to the trusts of terms under *ib.*, s. 16, preferably by raising the money required under *ib.*, s. 71, by a charge by way of legal mortgage, if there is not sufficient capital money in hand to pay off the charge.

(xx) It may be suggested that an express trust for sale should be declared, instead of relying on the statutory trust, and that the daughters should be expressly given entailed interests in the proceeds of sale. The objection to this is that no trust for sale is required or expedient unless the limitation in undivided shares takes effect. Moreover the over-reaching powers conferred by S. L. Act, 1925, s. 36, should be exercisable.

Undivided shares (trust for sale).

(y) These limitations are sufficient to create estates tail: L. P. Act, 1925, ss. 61 (4), 130. When land becomes subject to the trust for the daughters in undivided shares in tail, it will be held by the former S. L. Act trustees on

No. 16.

Issue in tail male of the Husband as he shall appoint. In default, to sons of

IN TRUST for all or such one or more exclusively of the others or other of (z) the sons or of the issue male of sons of the Husband for an estate not greater than an estate in tail male and charged with such principal or annual sum or sums (whether secured on a term of years with or without impeachment for waste or otherwise) in favour of any one or more of such sons or issue

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trust for sale: S. L. Act, 1925, s. 36. If it is not already vested in the trustees (*e.g.*, as the special representatives of the last tenant for life), they can call for a conveyance: *ib.* As soon as the land becomes subject to a trust for sale it ceases to be "settled land": L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, ss. 1 and 3.

As to limitations to devolve with a peerage, or to tenants in common.

Where the land is to devolve with a title all the limitations should, as a rule, be in tail male. Where there is a limitation to persons as tenants in common the trustees or other estate owners will hold on the statutory trusts: S. L. Act, 1925, s. 36. They will have the same powers as the former tenant for life: *ib.*, also L. P. Act, 1925, s. 28 (as amended).

(z) Where the husband and wife are to have a power of appointment among the issue of their marriage the form will (unless the land is to be vested in trustees on trust for sale) be:—

No. 16A.

Variation where Husband and Wife may appoint to issue of their marriage (trust instrument).

IN TRUST for all or such one or more exclusively of the others or other of the children, child or more remote issue of the now intended marriage for such estates and interests and charged with such principal or annual sum or sums (whether secured on a term of years with or without impeachment for waste or otherwise) in favour of any one or more of such children or other issue, and subject to such lawful conditions, restrictions, limitations and remainders over for the benefit of all or any one or more of such children or other issue for such estates and interests as the Husband and Wife shall from time to time by any deed, revocable or irrevocable, appoint, And in default of and subject to any such appointment, then as the survivor of them shall in like manner or by Will or codicil appoint; And in default of and until and subject to any such appointment, UPON TRUST (subject to the statutory trust for sale) for all the children of the said intended marriage in equal shares as tenants in common in tail general, with cross remainders between them as to accruing as well as original shares in tail general; And if there shall be but one such child, then, as to the entirety, UPON TRUST for such child in tail general, with remainder, UPON TRUST for the Husband (*or other settlor*) in fee simple or absolutely.

In default to children in tail, with cross remainders.

Proper method of settling land among children.

Perpetuities.

This Form is sometimes used, but is not recommended; it corresponds with the usual form of trusts in a personalty settlement. Where land is to be divided between the children it is better to convey it on trust for sale and settle it as personal estate. Care must be taken when an appointment is made not to infringe the rules as to remoteness.

marriage in tail male, remainder to Husband in fee (trust instrument).

male for any estate not greater than as aforesaid and subject to such conditions, restrictions, limitations and remainders over for the benefit of all or any one or more of such sons or issue male for any estate not greater than as aforesaid, as the Husband shall from time to time by deed, revocable or irrevocable, or by Will or codicil appoint: And in default of and until and subject to any such appointment UPON TRUST for the first and other sons of the said intended marriage successively according to seniority in tail male, with remainder UPON TRUST for the Husband in fee simple or absolutely.

No. 17.

Full limitations in strict settlement (not on marriage) or in a Will (trust instrument).

(1) UPON TRUST for the said A. B. for his life,(*a*) with remainder

(2) UPON TRUST for W. B. (the eldest son of the said A. B.) for his life,(*aa*) with remainder

(3) UPON TRUST for the first and other sons of the said W. B. successively according to seniority in tail male, with remainder

(4) UPON TRUST for J. B. (the second son of the said A. B.) for his life,(*aa*) with remainder

(5) UPON TRUST for the first and other sons of the said J. B. successively according to seniority in tail male, with remainder

(6) UPON TRUST for the third, fourth and other subsequently born younger sons of the said A. B. (*i.e., unborn sons* (*b*)) successively according to seniority in tail male, with remainder

(7) UPON TRUST that the persons to whom estates in tail male are hereinbefore limited may successively take estates in tail general in the same order, with remainder

(8) UPON TRUST for the first and other daughters of the said W. B. successively according to seniority in tail male, with remainder

(9) UPON TRUST for the first and other daughters of the said J. B. successively according to seniority in tail male, with remainder

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Life interest where restored.

(*a*) For this limitation of a life estate in a resettlement substitute Form No. 12, p. 252, where so desired; and see Form No. 7.

Discretionary trust for life of son.

(*aa*) If a discretionary trust is to be imposed during the lifetime of the son, a life interest should be limited to him, and by a deed of even date he should assign it to the trustees on discretionary trusts. By this method he will become protector of the settlement when his life interest falls in.

Protectorship.

(*b*) In a Will the clause reducing the interests of tenants in tail born in the testator's lifetime to interests for life (see Forms in Wills (Real)) should be added.

This Form (No. 17) assumes that life interests are all made unimpeachable for waste, see Form No. 7, p. 249.

(10) Upon trust for all the same daughters successively in the same order in tail general, with remainder

(11) Upon trust for C. W. (the eldest daughter of the said A. B. and wife of, &c.) during her life, with remainder

(12) Upon trust for the first and other sons of the said C. W. successively according to seniority in tail male, with remainder

(13) Upon trust for K. B. (the second daughter of the said A. B.) during her life, with remainder

(14) Upon trust for the first and other sons of the said K. B. successively according to seniority in tail male, with remainder

(15) Upon trust for the third, fourth and other subsequently born younger daughters of the said A. B. (*i.e.*, *unborn daughters*) successively according to seniority in tail male, with remainder

(16) Upon trust that the several persons to whom estates in tail male are hereinbefore limited in remainder after the life estate of the said C. W. may take successively estates in tail general in the same order, with remainder

(17) Upon trust for the first and other daughters of the said C. W. successively according to seniority in tail general, with remainder

(18) Upon trust for the first and other daughters of the said K. B. successively according to seniority in tail general, with remainder

(19) Upon trust for the said A. B. in fee simple or absolutely (*c*)

No. 18.

Limitations of land to go along with a peerage (trust instrument).

(1) Upon trust for the said —— (*Present Peer*) during his life, (*d*) with remainder

(2) Upon trust for the said —— (*eldest son*) during his life, with remainder

(3) Upon trust for the first and other sons of the said —— (*eldest son*) successively according to seniority in tail male, with remainder

(4) Upon trust for (*take all the sons of the Present Peer in existence, giving them life estates, with remainder to their sons successively according to seniority in tail male*, with remainder

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Tenant in tail entitled to the ultimate limitation.

(*c*) In the case of a resettlement by father and eldest son, who has disentailed, the ultimate limitation should be to the son in fee simple or absolutely.

All land, whether freehold or leasehold, to be included in the limitations.

After 1925, all land (whether freehold, enfranchised land or leaseholds) will be included in the original limitations. There will be no need for separate clauses dealing with enfranchised lands and leaseholds by reference to the freeholds. Hence the word "absolutely" is added to the ultimate limitation as applying to the leaseholds.

(*d*) Substitute in a resettlement Form No. 12, p. 252, if required.

(5) UPON TRUST for the fourth,(e) fifth and other subsequently born younger sons of the said —— (*Present Peer*) successively according to seniority in tail male,(f) with remainder

(6) UPON TRUST that the several persons (other than the persons to take under the foregoing limitations) who are or shall be in the line of the heirs male (g) of the body of ——, first [Earl] of ——, may take successively the following estates and in the following order and manner (that is to say):

THAT each of such several persons (other than as aforesaid) born at the date hereof shall take an estate for his life, with remainder immediately after his death

UPON TRUST for his first and other sons (not being persons who would also take life estates) successively according to seniority in tail male, and so that each of such several persons (other than as aforesaid) shall take their estates successively in the order in which, as heirs male of the body of the first [Earl] of ——, they would succeed to the [Earldom] of ——, with remainder

(8) UPON TRUST for the said —— (h) in fee simple or absolutely.

No. 19.

General power of appointment in a resettlement (trust instrument).

UPON such trusts, and in such manner generally as the said —— (*father*) and —— (*son*) shall from time to time by any deed, revocable or irrevocable, jointly appoint, And in default of and until and subject to any such appointment.(i)

(e) It is assumed that there are three sons of the present peer in existence. This is a limitation to unborn sons.

(f) In a Will, use the Form cutting down estates tail of persons born in testator's lifetime.

(g) It is assumed that the Letters Patent granted the dignity to the first peer and the heirs male of his body.

(h) The ultimate remainder should be to the settlor, unless father and son are resettling, when it should be to the son. It is assumed that life interests are made unimpeachable for waste, see Form No. 7, p. 249.

General power; effect on stamp duty.

(i) This power is frequently inserted in a resettlement to avoid a claim for *ad valorem* stamp duty under Fin. (1909-10) Act, 1910, s. 74. In a resettlement on the marriage of a son this power, if inserted, should either come after the provisions for the wife and children of the intended marriage, or if placed first (as is more usual, so as to enable the settlement to be varied) the following proviso should be added:—

No. 19A.

Power of appointment not to prejudice jointure or portions.

PROVIDED that the foregoing power shall not be capable of being exercised so as to prejudice either the yearly rentcharge of £—— hereinafter limited to the said —— (*son's wife*) or the term of —— years hereinafter limited for raising portions for the younger children of the said intended marriage without the respective consents in writing of the said —— (*son's wife*) and of the trustees or trustee for the time being of the said term.

No. 20.

General power in a resettlement for son and the person of full age next entitled in remainder to appoint after the death of the father (trust instrument).

Provided that if the said —— (*son*) survives the said —— (*father*), then the said —— (*son*) shall jointly with the person (if any) of full age for the time being entitled in remainder (whether the remainder is defeasible by the birth of another person or not) expectant on the estate for life of the said —— (*son*) for an estate for life or in tail male by purchase under the limitations hereinbefore contained have power after the death of the said —— (*father*) by any deed from time to time to appoint the premises hereby settled or any part thereof, Upon such trusts and generally in such manner as the two appointors think fit, but subject to the limitations having priority to the estate of the person who joins with the said —— (*son*) in making the appointment.(*j*)

No. 21.

Name and arms clause (trust instrument).

(1) Every person who, under the limitations hereinbefore contained,(*k*) becomes entitled as tenant for life or as tenant in tail [male or in tail] by purchase to the possession or to the receipt of the rents and profits of the premises hereby settled (not merely to a share in the income of the proceeds of sale thereof) shall (unless prevented by death or accident)—

Obligations.

(i) take, use and bear and continue to use and bear in all deeds and writings which he or she shall sign, and upon all occasions, the surname of ——, either without any other surname or with and after (*l*) any other surname, and

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(*j*) This power, if inserted, will come at the end of all the limitations. It will not affect the provisions (if any) for the wife and younger children of the son. It may render unnecessary the execution of a disentailing assurance.

The limitations "hereinbefore contained."

(*k*) A person whose estate is accelerated by the operation of the clause does not, during the accelerated period, become entitled under the limitations *hereinbefore* contained, and is not affected by the clause: so decided by Jessel, M.R., in an unreported case, *Haygarth* v. *Mostyn*, 1880, H., No. 1711 (21st July, 1881); this should be so, as such person may not be aware of a "discontinuance" giving rise to a forfeiture, and during the accelerated period his estate may be liable to be divested by the birth of issue. See also as to the construction of a name and arms clause, *Musgrave* v. *Brooke* (1884), 26 Ch. D. 792; 54 L. J. Ch. 102; *Re Cornwallis* (1886), 32 Ch. D. 388; 55 L. J. Ch. 716; *Re Greenwood* [1903], 1 Ch. 749; 72 L. J. Ch. 281; *Re Evans* [1920], 2 Ch. 469; 89 L. J. Ch. 626.

Chattels and chattels real.

Perpetuities, cesser and shifting clauses.

As chattels and chattels real can now be entailed in the same way as freeholds and the entail therein can be barred, no express provision, taking them out of the operation of a shifting or cesser clause, when under the old law they would otherwise have vested absolutely, is required to avoid infringing the perpetuity rule; as to the old law, see *Miles* v. *Harford* (1879), 12 Ch. D. 691; *Re Beresford-Hope* [1917], 1 Ch. 287; 86 L. J. Ch. 182: *Portman* v. *P.* [1922], 2 A. C. 473; 91 L. J. Ch. 708.

(*l*) See *Re Eversley* [1900], 1 Ch. 96; 69 L. J. Ch. 14; *Re Drax* (1906), 94 L. T. 611; 75 L. J. Ch. 317, as to what is a sufficient compliance.

(ii) use and continue to use the arms of —— or quarter the same with his or her family arms, and

(iii) apply for and endeavour to obtain a Royal licence, or take such other steps as may be requisite (*m*) to authorise the user and bearing of the said surname and arms.

(2) WHERE any person becoming so entitled shall—

Effect of default.

(a) refuse or neglect (*n*) to take, use and bear the surname and arms aforesaid, or to take such steps as aforesaid, or

(b) shall at any time discontinue to use and bear the surname and arms aforesaid, then, and in every such case :—

As to tenant for life.

(i) If the person who shall so refuse or neglect or discontinue as aforesaid shall be tenant for life, the interest for life of that person and all powers annexed thereto, and in the case of a female every rentcharge already appointed in favour of her husband, shall absolutely determine and become void and the premises hereby settled shall immediately be held UPON TRUST from time to time (during the residue of the life of the person whose interest for life so determines) to pay the rents and profits of the premises to or permit the same to be received by the persons who would for the time being be entitled thereto under the limitations hereinbefore contained if that person were dead (*o*), but not so as to accelerate any jointure or portions already appointed or charged by that person ;

As to tenant in tail.

(ii) If the person who shall so refuse, neglect or discontinue as aforesaid shall be tenant in tail [male or in tail], then the estate in tail [male or in tail] of that person shall absolutely determine, and the premises hereby settled shall immediately be held in trust for the person next in remainder under the

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Requirements

(*m*) To give effect to the requirements of the clause a grant should be obtained, if practicable, from the College of Arms, but the impossibility of obtaining such a grant does not create a forfeiture: *Austen* v. *Collins* (1886), W. N. 91 ; *Re Croxon* [1904], 1 Ch. 252 ; 73 L. J. Ch. 170. The obligation to assume arms is not satisfied by a *de facto* user of such arms, but by obtaining a Royal Licence to bear the surname and arms followed by a grant and exemplification of arms from the College of Arms ; the obligation to bear a particular coat of arms is not satisfied by a grant of arms resembling that coat: *Re Berens* (1926), 70 Sol. J. 405, unless the applicant would not be granted the exact coat.

(*n*) An infant cannot "refuse or neglect," so is not bound by the condition : *Re Edwards* [1910], 1 Ch. 541 ; 79 L. J. Ch. 281.

(*o*) As to the effect of this clause, see *Re Michell* [1892], 2 Ch. 87 ; 61 L. J. Ch. 326. It is no longer necessary to limit any estate to trustees by a name and arms clause ; the estate owner will hold the land on the requisite trusts : S. L. Act, 1925, s. 16 ; the S. L. Act trustees will hold capital money on corresponding trusts.

limitations hereinbefore contained in the same manner as if the person whose estate in tail [male or in tail] is so made to determine were dead and there were a general failure of issue inheritable to the estate which is so made to determine ;

(iii) All necessary vesting instruments shall be executed which are consequential on the change of ownership in accordance with the Settled Land Act, 1925.

Vesting instrument.

(3) PROVIDED that the obligations to take, use and bear and continue to use and bear the surname and arms aforesaid, and to take such steps as aforesaid, and the proviso for cesser of estates hereinbefore contained, shall not apply—

Savings.

(i) to a peer or peeress, or
(ii) to an infant unless and until the infant attains the age of twenty-one years, or
(iii) to a person who would forfeit another estate [of substantial value] by compliance with the obligation, or (except so far as relates to a discontinuance to use and bear the surname and arms aforesaid)
(iv) to a person who already uses and bears the same, or (except as next hereinafter provided)
(v) to a female during coverture :

(4) THE obligations aforesaid shall apply to the husband of every female (not being a peeress either in her own right or in right of her husband) who becomes entitled as aforesaid (*p*) and whose estate has not before marriage determined under the proviso for cesser aforesaid, if and so far as such obligation would have applied to him in case he had himself become so entitled, and notwithstanding that his wife may have previously complied with the same, and shall so apply to him as from the marriage or the time when his wife becomes so entitled, whichever event last happens ; and any refusal, neglect or discontinuance by any such husband shall be deemed to be a refusal, neglect or discontinuance by his wife, and the aforesaid proviso for cesser of estates shall apply to her accordingly.

Married woman.

(5) PROVIDED that in every case (except a case of discontinuance to use and bear the surname and arms aforesaid) one year from the date when the obligations become binding shall be allowed for compliance therewith, and (except in a case of discontinuance as aforesaid) the proviso for cesser of estates

Time for compliance.

(*p*) It is not usually expedient to apply the clause to females who take the proceeds of sale as tenants in common : see Vaizey on Settlements, 1269.

Females taking as tenants in common.

shall be postponed accordingly, but shall take effect immediately upon the expiration of such one year if the obligations have not then been complied with.(*q*)

SECTION IV.

Trusts of Terms (In Trust Instruments).

No. 22.

Trusts of portions term in marriage Settlement.

THE Trustees [*or if there is a separate set of trustees* "The Portion Trustees," *and so throughout*] shall stand possessed of the said term of —— years [hereinbefore limited in substitution for the term of —— years limited by the recited —— and for the trusts thereof (*r*)] Upon the following trusts, namely :—

(1) UPON TRUST if there shall be any child or children of the said intended marriage who attain the age of twenty-one years, or being female marry under that age (*s*) (other than and besides a first (*t*) or only son or any other son or sons [or any daughter or daughters (*u*)] who, before attaining the age of twenty-one years [or being female before marrying under that age (*u*)], shall or would, if of full age, be or become [indefeasibly] (*v*)

Request to take name and arms.

(*q*) For a Form applying the clause independently to personal estate so as to prevent a tenant in tail by purchase from becoming indefeasibly entitled on attaining twenty-one and barring the entail, see *Re Cornwallis* (1886), 32 Ch. D. 388 ; 55 L. J. Ch. 716.

It is becoming a practice merely to insert a request (see Forms, Wills (Real), *infra*) that the name and arms should be taken and used without imposing any penalty by way of cesser of estates.

Variations where a substituted term is limited in a resettlement.

(*r*) For limitation of the term, see Form No. 14, p. 255 ; where a substituted term is limited, the trusts of the new term may be more beneficial to the children, but in other respects should give effect to the trusts of the term intended to be superseded. Trustees of a term for raising portions, with power to postpone the raising, are bound to consider the interest of the persons entitled to the estate as well as the portioners : *Re Sandys* [1916], 1 Ch. 511 ; 85 L. J. Ch. 418.

Vesting of portions.

(*s*) As to the importance of limiting a time for the vesting of portions, see *Hemming* v. *Griffith* (1860), 2 Giff. 403 ; *Knapp* v. *K.* (1871), L. R. 12 Eq. 238 ; *Henty* v. *Wrey* (1882), 21 Ch. D. 332 ; 53 L. J. Ch. 667 ; *Re De Hoghton* [1896], 2 Ch. at p. 396 ; 65 L. J. Ch. 667 ; *Waller* v. *Stevenson* (1912), 56 Sol. J. 666.

(*t*) See *Re Stawell* [1909], 1 Ch. 534 ; 2 Ch. 239 ; 78 L. J. Ch. 289, 677 ; *L'Estrange* v. *Winniett* [1911], 1 Ir. R. 62 ; *Re Wise* [1913], 1 Ch. 41 ; 82 L. J. Ch. 25 ; *Re Beresford* [1914], 1 Ir. R. 222.

(*u*) Omit these words in brackets if the daughters take as tenants in common in tail, as in Form No. 15, p. 256. The words should only be used if the daughters take successively.

"Indefeasibly."

(*v*) The word "indefeasibly" should be used when a daughter who takes the land is to be excluded from taking a portion (see last note), or if there is a power of appointment among issue, as in Form No. 16, p. 257. If a wide power of appointment is used (Form No. 16A, p. 257) there may be no need for a portions term. When the settlement contains a name and arms clause, or other shifting clause, and the word "indefeasibly" is used, it should be qualified, "except by the operation of," &c.

entitled under the limitations hereinbefore contained to the possession of or to a life or entailed interest in remainder or reversion immediately expectant on the interest for life of the Husband (*w*) in the premises hereby settled),(*x*) then after the death of the Husband, or in his lifetime with his consent in writing,(*y*) by mortgage (by subdemise or charge) or sale or demise of the premises or any part thereof for all or any part of the same term, or by receipt of the income thereof, or by sale of timber or minerals, or by all or any of those means or by any other reasonable means,(*z*) to raise for the portion or portions of such child or of all or any one or more exclusively of the others or other of such children, or of the issue of any such child or children, the sum of money hereinafter mentioned, with interest thereon at the rate of £5 per cent. per annum from the death of the Husband (that is to say) :—

(i) The [net] sum of £—— [free of duty and costs] if there shall be only one such child,

(ii) The [net] sum of £—— [free as aforesaid] if there shall be two such children and no more,

(iii) And the [net] sum of £—— [free as aforesaid] if there shall be three or more such children.

Such portion or portions to be vested in and payable to such child or children or issue at such age or time (not previous in case of a child to the age of twenty-one years, or being a daughter to marriage under that age), or any one or more exclusively of the other or others of such children or issue at such age or time (but in case of a child not previous as aforesaid), and if more than one in such shares and with such provisions for maintenance, advancement and otherwise at the discretion of any persons and with such trusts over and generally in such manner for the

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(*w*) This assumes that the Husband has the first life interest. If there is a prior life interest the form will read—" in remainder expectant on the determination of the respective life estates of —— and the Husband " and consequential alterations must be made in the form.

(*x*) *Re Wise* [1913], 1 Ch. 41 ; 82 L. J. Ch. 25 ; *Re Beresford* [1914], 1 Ir. R. 222.

(*y*) If a tenant for life desires that money should be raised for portions or advancements during his life, he can concur in an equitable mortgage by the trustees of the portions term and demise his life estate, and then raise the money under S. L. Act, 1925, s. 71, or independently of an equitable mortgage. It may save duty if the portions are paid in his lifetime. The trustees may accept the money before it becomes payable : T. Act, 1925, s. 15.

(*z*) The trustees must have regard to the interest of all the beneficiaries, not only that of the portioners : *Re Sandys* [1916], 1 Ch. 511 ; 85 L. J. Ch. 418.

benefit of such child or children or issue, or any of them, as the Husband shall by deed, revocable or irrevocable, or by Will or codicil appoint ; And in default of and until and subject to any such appointment to be paid to such child or children, and if more than one, in equal shares after the death of the Husband or in his lifetime with his consent :

Hotchpot clause.

(2) PROVIDED that a child who, or whose issue, shall take any money by appointment shall not, in the absence of any direction to the contrary, take any share in money unappointed without bringing the amount appointed to such child, or his or her issue, into hotchpot and accounting for the same accordingly :

Trust for maintenance and education.

(3) UPON FURTHER TRUST, after the death of the Husband, to raise out of the income of the premises or by the sale of timber and pay or apply for or towards the maintenance (*a*) or education of any child or other issue for the time being presumptively entitled to a portion under the trusts aforesaid, and until such portion becomes payable such yearly sum (not exceeding interest at the rate of £5 per cent. per annum on the then presumptive portion of such child or other issue) as the Husband shall in manner aforesaid appoint ; And in default of any such appointment, then such sum as the Trustees shall deem proper, not exceeding the amount hereinbefore authorised to be appointed by the Husband for the like purposes, such yearly sum to be clear of all deductions [except for income tax (*b*)] and to be applied by the Trustees or to be paid to the guardians or guardian of such child or other issue for the purposes aforesaid, and so that in the latter case the Trustees shall not be concerned to see to the application thereof :

Advancement clause.

(4) PROVIDED that the Trustees may at any time after the death of the Husband or in his lifetime, with his consent in writing, raise by any of the means hereinbefore authorised, and at their discretion apply for the advancement or benefit of any son or other male issue (*c*) presumptively entitled to a portion

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Maintenance.

(*a*) In the absence of express provision the court may order maintenance when the term has commenced to run : *Re Greaves' S. E.* [1900], 2 Ch. 683 ; 69 L. J. Ch. 596 ; and see *Caldbeck* v. *C.* [1911], 1 Ir. R. 144.

(*b*) See note to Form 8, p. 250, *supra* ; sometimes the maintenance money is made payable free from " all deductions except for death duties and income tax."

Extension of power of advancement.

(*c*) Sometimes the power of advancement is now extended to " any child or other issue " presumptively entitled. An express power should be used : T. Act, 1925, s. 32 (2).

under the trusts of the said term, any parts not exceeding together one-half of the presumptive portion of any (*c*) such son or other male issue, so that the amount so raised be taken in part discharge of the portion in respect of which it is raised in case (*c*) such son or other male issue eventually becomes entitled to a portion:

Maximum capital sum raisable.

(5) PROVIDED also, that no more than the total [net] principal sum of £—— [free of duty and costs] (*the largest of the three sums named*) shall be raisable under the trusts aforesaid for portions and advancements, but the excess which would, but for this provision, have been raisable for portions and advancements shall sink into the estate:

Surplus rents and profits.

(6) SUBJECT to the trusts hereinbefore declared, and to the right of the Trustees to raise by any of the means aforesaid all costs and expenses incurred in relation thereto, the rents and profits of the premises comprised in the said term shall be received by the persons for the time being entitled in remainder or reversion immediately expectant upon that term:

(7) (*Add power to surrender term, Form No. 32, p. 281, but this power should only be inserted once in the settlement.*)(*d*)

No. 23.

Trusts of a term certain for the upkeep of policies exchanged by any tenant for life for capital money.

(1) THE Trustees shall stand possessed of the said term of two hundred years UPON TRUST during the lifetime of any person of full age for the time being entitled under the foregoing limitations for an interest in possession during his life (in this clause called "the tenant for life") who shall have assigned to the Trustees a policy approved by them on his life at the request of the tenant for life to raise, out of the rents and profits of the premises comprised in the said term or by the sale of timber all money payable as premiums or otherwise by the tenant for life in respect of the maintenance or restoration of any policy assigned as aforesaid or any policies substituted therefor pursuant to any covenant for that purpose to be given by the tenant for life at the request of the Trustees (but without prejudice to the right of the tenant for life to require that any future bonuses shall be applied in or towards reduction of premiums):

Power to apply income for upkeep of policy and trust of policy money.

(2) THE Trustees may at any time in their absolute discretion apply any rents, profits or income arising under the trusts of

Daughter's portion to sink.

(*c*) See footnote p. 266.

(*d*) If a daughter's portion is to sink for the benefit of the inheritance if she dies unmarried, see provision for this purpose in Forms, Wills (Real), *infra*, which can be adapted.

the said term of two hundred years in making any payments proper for keeping on foot or restoring any policies so assigned or for effecting, keeping on foot or restoring any substituted policy: And every policy so assigned or effected and the money payable thereunder shall be held and applied Upon the trusts and subject to the powers and provisions hereby declared concerning capital money arising from the premises hereby settled:

Protection of trustees.

(3) It shall not be obligatory on the Trustees to enforce any covenant which may be entered into by the tenant for life in reference to any policy whether original or substituted or to apply any income under the trusts of the said term of two hundred years in making payments for keeping on foot or restoring any policy unless when required so to do in any specific case by writing signed by some person or the guardian of some person beneficially interested; And unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken; And any omission or neglect by the Trustees in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust, and the Trustees shall not be responsible on account of any policy becoming void through any means except their own omission or neglect when so required, and upon due provision made as aforesaid.

No. 23A.

Trusts of a determinable term of years for the upkeep of settled policies.(e)

(1) The Trustees shall stand possessed of the said term of ninety-nine years determinable on the death of the said —— (*settlor*), Upon trust during the life of the said —— (*settlor*), and upon the request in writing of any person beneficially interested in the money secured by the policies mentioned in the —— Schedule hereto or of the guardian of any such person, to raise out of the rents and profits of the premises comprised in the said term or by the sale of timber all money payable as premiums or otherwise by the said —— (*settlor*) in respect of the maintenance or restoration of the policies aforesaid, or any policies substituted therefor, pursuant to the covenant for that purpose by the said —— (*settlor*) hereinafter contained (but without prejudice to the right of the said —— (*settlor*) to require that any future bonuses shall be applied in or towards reduction of premiums):

(*e*) For limitation of the term, see Form No. 10, p. 252. If the policies are not already vested in the trustees they should be assigned to them, see Form No. 35, p. 283.

(2) (*Add a covenant by the settlor to keep up the policies; see Settlements* (*Personal*), *Form No.* 49, *clause* (1), *p.* 148, *also add, if desired, power to surrender or sell any policy; see that Form*):

Provision as to the application of income under the trusts of the policy term.

(3) THE Trustees may at any time in their absolute discretion apply any rents, profits or income arising under the trusts of the said term of ninety-nine years in making any payments proper for keeping on foot or restoring any of the policies mentioned in the —— Schedule hereto, or for effecting, keeping on foot or restoring any substituted policy; And every policy so effected, and the money payable thereunder, shall be held and applied Upon the trusts and subject to the powers and provisions hereby declared (*f*) concerning the policies mentioned in the —— Schedule hereto and the money payable thereunder:

Indemnity to the Trustees in respect of the policies.

(4) IT shall not be obligatory on the Trustees to enforce any covenant hereinbefore contained in reference to any policy, whether original or substituted, or to apply any income under the trusts of the said term of ninety-nine years in making payments for keeping on foot or restoring any policy, unless when required so to do in any specific case by writing signed by some person or the guardian of some person beneficially interested, And unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken; And any omission or neglect by the Trustees in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust, and the Trustees shall not be responsible on account of any policy becoming void through any means except their own omission or neglect when so required and upon due provision made as aforesaid.

(5) (*Add power to surrender term, Form No.* 32, *p.* 281, *but this power should only be inserted once.*)

No. 24.

Trusts of term of years to pay off charges on life interest. (*g*)

(1) THE Trustees shall stand possessed of the said term of —— years UPON TRUST from time to time at the request in writing of the said —— (*father*) or his personal representatives, by mortgage (by charge or sub-demise) of the premises or any part thereof for any part of the said term, or by any other means, to raise any sums not exceeding in the whole the sum of

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(*f*) The trusts of the policy money will generally be declared later, with the trusts of any capital money and investments settled to devolve with the land, see Form No. 36, p. 283.

(*g*) This Form is intended for use where father and son are resettling and the father's life interest under the previous settlement has been incumbered.

£——, which when raised shall be applied in paying off all or any of the mortgage debts mentioned in the —— Schedule hereto amounting together to the sum of £——, And also in paying the costs and expenses of or incidental to the execution of the trusts of the said term of —— years; And also all costs and expenses of or incidental to any transfers, surrenders, releases or other dealings with the said mortgage debts which may be deemed expedient, all such costs and expenses to be first admitted and approved by the Trustees, which admission or approval shall in all respects be conclusive as against all persons claiming hereunder:

Costs to be approved by trustees.

To give mortgagees further security.

(2) IN the meantime, if expedient, the Trustees may as respects the said term from time to time at the like request charge or demise the premises or any part thereof by way of mortgage to or in trust for the respective persons for the time being entitled to the aforesaid mortgage debts amounting to £——, or to such of them as may not for the time being have been paid off as aforesaid, To the intent that by such charges or demises by way of mortgage or in trust a further security may be made for all or any of the said mortgage debts in consideration of the rate of interest thereon, or on such of them as shall be so further secured, being reduced, or that the same may be otherwise secured on more favourable terms, or that the persons entitled thereto may be induced not to call in the same, or for any other like purpose:

Subsequent incumbrancers not to marshal prior securities.

(3) PROVIDED that if after any such further security shall have been given under the trusts aforesaid the said —— (*father*) shall further mortgage or incumber his life interest in the

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The term will be limited to the trustees from the date of the resettlement without impeachment of waste, and the term should precede the father's life interest, see note to Form No. 10, p. 252.

Where parts of property subject to incumbrances affecting the inheritance are brought into settlement the following form should be used:—

No. 24A.

Mortgage debts on lands brought into settlement to be charged thereon in exoneration of Settlor.

ALL principal money and interest secured by the Mortgages mentioned in the —— Schedule hereto shall be primarily charged upon and payable out of the property now charged therewith and hereby settled in exoneration of [all other property belonging to the said —— (*father*) and now charged therewith and of] the said —— (*father*), and his estate and effects.

Mortgages affecting the inheritance.

Unless there is to be a trust to accumulate, no term need be limited for raising money to discharge incumbrances affecting the inheritance: S. L. Act, 1925, s. 71 (1) (i). See Form for this purpose in Wills (Real).

premises hereby settled, the persons claiming under such further mortgages or incumbrances shall not be entitled to marshal the securities of the prior incumbrancers so as to impose the mortgage debts of such prior incumbrancers on the said term of —— years in exoneration of the life interest of the said —— (*father*) in the premises, but such life interest and any policy of assurance included in the prior incumbrance shall remain and be primarily charged with the incumbrances now affecting the same respectively in exoneration of the said term of —— years and the premises therein comprised.

SECTION V.

Powers of Charging (*In Trust Instruments*).

No. 25.

Power for any person named to charge a principal sum.(*h*)

(1) NOTWITHSTANDING the limitations hereinbefore contained, the said —— may from time to time by any deed, revocable or irrevocable, or by Will or codicil specially referring to this power, charge all or any of the premises hereby settled with any sums not exceeding in the whole the sum of £—— and interest thereon at a rate not exceeding £5 per cent. per annum for his own benefit, and may by the same or any other deed or by Will or codicil appoint the premises charged for any equitable term of years with or without impeachment of waste Upon usual trusts by mortgage or otherwise to raise the principal money and interest charged and the costs and expenses (if any) of raising the same [and every such charge and appointment shall take priority over all the other limitations and powers hereof]:

(2) LEGAL effect shall (unless the charge is paid off out of capital money) be given to any such charge under the provisions of section sixteen or section seventy-one of the Settled Land Act, 1925, as the case may require, but if raised under the last-mentioned section shall in the first instance be paid to the Trustees.

No. 26.

Power for tenant for life to raise money by

(1) NOTWITHSTANDING the limitations hereinbefore contained, the said —— (*tenant for life*) may from time to time during his life, raise by mortgage of the premises hereby settled, or any part

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(*h*) This power is desirable in the case of a resettlement in preference to increasing portions to any large extent, as it saves any question as to a claim for extra succession duty payable when the eldest son is in effect the settlor. The father can raise the money for himself under this power and then settle it on the younger children, but under the present practice the Inland Revenue do not claim succession duty at the higher rate.

Succession duty on portions.

mortgage in priority to the limitations of a settlement.(*i*)

thereof, any sums not exceeding in the whole the sum of £—— for his own benefit, and for that purpose may from time to time exercise the powers conferred by section seventy-one of the Settled Land Act, 1925, in like manner as if the money were raisable for one of the purposes mentioned in that section [with interest thereon at a rate not exceeding £5 10*s.* per cent. per annum] and every mortgage so made shall (subject to the provisions thereof) have priority over the limitations herein contained.

Vesting instruments.

(2) In every vesting instrument the powers conferred by the said section shall be extended so as to authorise the raising of the said money by the said —— (*tenant for life*) and the money shall in the first instance be paid to the trustees.

No. 26A.

Power for any tenant for life in possession to require capital money to be paid to him in exchange for policies.(*j*)

(1) If any tenant for life of full age in possession under the limitations hereof shall from time to time assign to the Trustees (without reserving any right of redemption), any policies on his life effected in such offices as the Trustees shall reasonably approve then and in any such case such tenant for life may, by writing, direct that the Trustees shall pay to him the amount secured to be paid on his death by any such policy out of any capital money or investments for the time being subject to the trusts hereof, and the money to be received or recovered under any such policy shall be accepted in satisfaction of the amounts from time to time paid to such tenant for life under this present power:

Provided that in the case of any policy with profits, any bonus, or part of a bonus, not applied in reduction of premiums and not required to replace the money paid to the tenant for life, shall be held in trust for him absolutely.

Covenants to maintain.

(2) As a condition to making any such advance, the Trustees may require such tenant for life to enter into covenants for the upkeep of the policies assigned and to maintain or restore any such policy in the usual way.

Authorised investments.

(3) All policies so accepted by the Trustees, and any policy substituted therefor shall be deemed to be authorised investments for the purposes of this settlement.

(*i*) This is an alternative Form to the last. Where this Form is used the mortgage has immediate priority to the settlement. This Form is used when it is unlikely that there will be capital money in hand to pay off the incumbrance.

Protection of mortgagees.

(*j*) This form will be used in connexion with Form No. 23, *supra*, declaring the trusts of a policy term. A mortgagee is not concerned when the money is paid to S. L. Act trustees to see that the money advanced is wanted for any purpose or that no more than is wanted is raised: S. L. Act, 1925, s. 95.

(4) PROVIDED that the aggregate amount to be paid from time to time to any such tenant for life under this present power shall not exceed such amount as shall, in the opinion of the Trustees, leave, after paying the premiums out of income, sufficient income for the proper upkeep of the premises hereby settled, and for answering or keeping down any charges payable out of income.

Limit of advances.

(5) IF there shall not be sufficient investments or capital money for the time being subject to the trusts hereof, out of which any such payment can be made as aforesaid, then the payment shall not be made unless and until there shall, in the opinion of the Trustees, be sufficient capital money in hand or interim investments out of which the advance can be properly made.

Payment to be made exclusively out of capital money in hand.

No. 26 B.

Power (specific) for a tenant for life to obtain money for his own benefit on assigning policies to the Trustees.

(1) IF the —— (*tenant for life*) shall from time to time assign to the Trustees any [further] policy on his life effected in such office as the Trustees shall reasonably approve then, and in any such case, he may, by writing direct that the Trustees shall pay to him the amount secured to be paid on his death by any such policy out of any capital money or investments for the time being subject to the trusts hereof and the money to be received or recovered under any such policy shall be accepted in satisfaction of the amounts from time to time paid to the —— (*tenant for life*) under this present power, and the covenants by the —— (*tenant for life*) for the upkeep of policies hereinbefore contained and the trusts of the term of —— years hereinbefore limited shall extend and apply to all such policies so accepted by the Trustees (*k*) and the same shall be deemed to be authorised investments for the purposes hereof.

(2) PROVIDED that the aggregate amount to be paid to the —— (*tenant for life*) under this present power shall not in the whole exceed the sum of £—— :

Fixed limit.

(3) PROVIDED ALSO that if there shall not be sufficient investments or capital money for the time being subject to the trusts hereof, out of which any such advance can be made as aforesaid, then and in any such case, the —— (*tenant for life*) may from time to time during his life raise by mortgage of the premises (other than advowsons) hereby settled or any part thereof, as if the money were authorised to be raised by section seventy-one of the

Power to raise money.

(*k*) A term should be limited to the trustees, in priority to the life interest, on trusts out of income to keep up the policies and the tenant for life must enter into the usual covenant with variations making it applicable to policies subsequently assigned to the trustees. This power may be required where a discretionary trust is imposed during the lifetime of the tenant for life.

Premiums to be paid out of income.

Settled Land Act, 1925, any sums which he would be entitled to have paid to him out of capital money under the provisions of this clause for his own use.

Vesting Instruments.

(4) In every vesting instrument the powers conferred by the said section shall be extended so as to authorise the raising of money by the said —— (*tenant for life*) for the purposes aforesaid, and the money shall in the first instance be paid to the Trustees.

Protection of mortgagees.

(5) No mortgagee shall be concerned to see or enquire whether the —— (*tenant for life*) has duly assigned to or vested in the Trustees a policy or policies on his life of sufficient value to authorise the intended payment to be made to him or whether the capital money and investments for the time being subject to the trusts hereof are insufficient to provide for the payment.

No. 27.

Power to jointure future wife.

Variations where power is given to son in a resettlement to jointure any wife.

(1) The said —— (*husband*) may, at any time, either before or after any marriage contracted by him subsequent to the now intended marriage [said —— (*son*) may at any time either before or after marriage], by deed, revocable or irrevocable, or by Will or codicil, appoint to his wife by such [any] marriage, if she survive him, for her life or for any less period, any yearly rentcharges not exceeding in the whole the yearly sum of £—— without any deduction (*l*) except for income tax, to commence from his death [whether the said —— (*father*) be then living or not (*m*)], and to be issuing out of all or any of the premises hereby settled (except advowsons) and to be paid at such times and in such manner as he [the said —— (*son*)] shall direct :

(2) Any such appointment may be made as often as the said —— (*husband*) [*or son*] shall marry, but so that the premises, or any of them, shall not under this power be at any one time (*n*) subjected to the payment of yearly rentcharges which in the whole [including the said rentcharge of £—— in favour of the said —— (*wife or intended wife*)] shall be in excess of the annual sum of £—— ; but any rentcharges or any part of any rentcharge which, but for this provision, would from time to time have occasioned or formed such excess shall not during the continuance of such excess be raisable out of the premises :(*o*)

(*l*) See notes to Forms Nos. 8 and 13, pp. 250, 254.

(*m*) On a resettlement the eldest son should be given an absolute power to jointure. If the jointure is not to commence, if the father survives him, till the father's death some other provision should be made for the son's wife.

(*n*) See *Re Beckett* (1905), 93 L. T. 746.

Divorce.

(*o*) The last part of this clause is required to provide against a second full jointure in case of a divorce: *Marlborough* v. *M.* [1901], 1 Ch. 165; 70 L. J. Ch.

(*Form No.* 31, *p.* 280, *enabling the rentcharge to be released, should be used in connexion with this Form.*)

No. 28.

Power to charge portions on future marriage.

THE said —— (*husband*) may at any time, either before or after any marriage contracted by him subsequent to the now intended marriage :—

Variations where the power to charge on any marriage is given to a son in a resettlement.

[THE said —— (*son*) may at any time, either before or after marriage] :—

(1) BY deed, revocable or irrevocable, or by Will or codicil [but subject to the term of —— years hereinbefore limited (*the portion term created by the Settlement*] charge all or any of the premises hereby settled (except advowsons) with the payment of a sum of money not exceeding the amount hereinafter specified, with interest thereon at a rate not exceeding £5 per cent. per annum from his death [whether the said —— (*father*) be then living or not (*p*)], for the portion or portions of his [the said —— (*son's*)] child or of all or any one or more exclusively of the other or others of his children by any [subsequent] marriage who attain the age of twenty-one years, or being female marry under that age,(*q*) or for the portion or portions of the issue of any such child or children (that is to say)—

(i) the [net] sum of £—— [free of duty and costs] if there shall be only one such child ;

(ii) the [net] sum of £—— [free as aforesaid] if there shall be two such children and no more ; and

(iii) the [net] sum of £—— [free as aforesaid] if there shall be three or more such children :

The said portion or portions to be vested in and payable to such child or children or issue at such age or time (not previous, in case of a child, to the age of twenty-one years, or being a daughter to marriage under that age), or any one or more exclusively of

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244. The donee of a power to jointure may make a bargain when exercising it: *Saunders* v. *Shafto* [1905], 1 Ch. 126; 74 L. J. Ch. 110. The powers conferred by L. P. Act, 1925, s. 121 (see also *ib.*, s. 122), will apply.

(*p*) On a resettlement the eldest son should be given an absolute power to charge portions. If the interest does not run till after the father's death, some other provision should be made for the son's children. A power of charging portions may be impliedly released by dealings clearly inconsistent with its exercise: *Nottidge* v. *Dering* [1910], 1 Ch. 297; 79 L. J. Ch. 439.

(*q*) If the limitations of the land are not confined (as in Form No. 15, p. 256), to issue of the intended marriage, any child of a subsequent marriage taking the land should be excluded, as in Form No. 22, p. 264.

Variation to exclude issue of son taking settled estate.

Also, where the power is given to a son in a resettlement, then his issue who take under the limitations should be excluded, as in Form No. 22, p. 264, and the necessary addition made to this Form (No. 28).

the other or others of such children or issue at such age or time (but in case of a child not previous as aforesaid), and if more than one, in such shares and with such provisions for maintenance, advancement and otherwise at the discretion of any persons, and with such trusts over, and generally in such manner for the benefit of any such child or children or issue, or any of them, as the said —— (*husband*) [*or son*] shall in manner aforesaid appoint :

Maintenance and education.

(2) By the same or any other deed or by Will or codicil (but subject as aforesaid) charge the premises charged with such portion or portions with the payment of any annual sums not exceeding interest on the principal sum so charged, or any part thereof, at the rate of £5 per cent. per annum, for or towards the maintenance or education of the child, children or other issue for the time being presumptively entitled thereto until the same becomes payable, such annual sums to be clear of all deductions, except for income tax (*r*) and to commence [not earlier than the death of the said —— (*son*) if the said —— (*father*) be living] from such time, and to be raised and paid in such shares and manner, and be applied for the purposes aforesaid at the discretion of such persons as the said —— (*husband*) [*or son*] shall in manner aforesaid appoint :

Advancement.

(3) By the same or any other deed or by Will or codicil (but subject as aforesaid) charge the premises with any sum or sums not exceeding together one-half of the presumptive portion of any son or other male issue, to be raised for his advancement or benefit, so that the amount raised be taken in part discharge of the portion in respect of which it is raised in case such son or other male issue eventually becomes entitled to a portion ; And every sum charged as lastly provided for the advancement or benefit of a son or other male issue may be paid [after the death of the survivor of the said —— (*father*) and —— (*son*)] in such manner or applied at the discretion of such persons as the said —— (*husband*) [*or son*] shall in manner aforesaid direct :

Power to appoint a term.

(4) By the same or any other deed or by Will or codicil (but subject as aforesaid) appoint the premises so charged for any equitable term of years without impeachment of waste Upon usual trusts by mortgage, sale or otherwise to raise the principal and interest and annual and other sums charged and all costs of raising the same ; And any charge and appointment under the aforesaid power may be made so often as the said ——

(*r*) See notes to Forms Nos. 8 and 13, pp. 250, 254.

(*husband*) [*or son*] shall marry, so that the premises, or any of them, be not ultimately liable to the payment of principal money in excess of the sum hereinbefore authorised to be charged according to the event :

Receipts by trustees of term.

(5) PROVIDED that all principal money so charged as aforesaid shall be paid in the first instance to the trustees of such term (if any) and their receipts shall be a complete discharge therefor.

(*Add power to surrender term, Form No.* 32, *p.* 281.)

No. 29.

Contingent power for successive tenants for life (other than the settlors) to limit rentcharges to husbands or wives.

(1) EVERY person (except the said ——(*s*)) hereby made tenant for life of the premises hereby settled may, from time to time, either before or after becoming, under the limitations hereinbefore contained, entitled to the possession or to the receipt of the rents and profits of the premises,(*t*) and either before or after any marriage contracted by him [or her] (but subject to the limitations, powers and charges having priority to the estate of the appointor) by deed, revocable or irrevocable, or by Will or codicil, appoint to any person the appointor may marry during the residue of the life of such person, if surviving the appointor, or for any less period any yearly rent-charges not exceeding in the whole for any one such person the yearly sum of £—— without any deduction, except for income tax,(*u*) to be issuing out of all or any of the premises hereby settled (except advowsons), and to be paid at such times and in such manner as the appointor may in manner aforesaid direct, and any such appointment may be made as often as the appointor shall marry :

Charge to be contingent.

(2) PROVIDED that any rentcharge appointed under the power last aforesaid is not to become a lien upon the premises, or be payable unless and until either the appointor shall be or become entitled to the possession or to the receipt of the rents and profits of the premises hereby settled, or some issue of the appointor shall or if of full age would be so entitled :(*v*)

Persons excepted.

(*s*) *E.g.*, the husband in a marriage settlement where there is a jointure for the intended wife and power to charge (Form No. 27, p. 274) on a re-marriage ; or a son whose wife (if any) is provided for or who has been given (Form No. 27, p. 274) an absolute power to jointure. The general rule is that the settlors arrange to take absolute powers to create family charges.

Assignment of life interest.

(*t*) A tenant for life, who, while his interest is in remainder, disposes of his life interest, nevertheless becomes entitled to the "possession" of the property on the termination of the prior life interest so as to be able to exercise powers conferred by the settlement : *Re Lord Petre* [1910], 1 Ch. 290 ; 79 L. J. Ch. 145.

(*u*) See notes to Forms Nos. 8 and 13, pp. 250, 254.

(*v*) The power is here contingent because the appointors are not the settlors.

Limit of rentcharges.

(3) PROVIDED also that the premises, or any of them, shall not under the power lastly hereinbefore contained be at any one time subject to the payment of yearly rentcharges appointed by any one appointor (*w*) which in the whole shall be in excess of the annual sum of £——, nor to any yearly rentcharges which in the whole shall be in excess of the annual sum of £——, but any rentcharges or any part of any rentcharge which but for this proviso would from time to time have occasioned or formed such excess shall not during the continuance of such excess be raisable out of the premises, and the several rentcharges appointed are to have the like priority as the interests of the persons by whom they are appointed.

(*Form No.* 31, *p.* 280, *enabling the rentcharges to be released, should be used in connexion with this Form.*)

No. 30.

Contingent power for successive tenants for life (other than the settlors) to charge portions.

EVERY person (except the said —— (*x*)) hereby made tenant for life of the premises hereby settled may, from time to time, either before or after becoming under the limitations hereinbefore contained entitled to the possession or to the receipt of the rents and profits of the premises, and either before or after marriage (but subject to the limitations, powers and charges having priority to the interest of the person making the charge):

(1) BY deed, revocable or irrevocable, or by Will or codicil charge all or any of the premises hereby settled (except advowsons) with the payment of a sum of money not exceeding the amount hereinafter specified, with interest thereon at a rate not exceeding £4 per cent. per annum from the death of such person making the charge, for the portion or portions of the child or all or any one or more exclusively of the others or other of the children of such person who attain the age of twenty-one years, or being female marry under that age (other than and besides a first or only son (*y*), or any other son or sons [or any daughter or daughters (*z*)], who before attaining the age of twenty-one years [or being female before marrying under that age] shall or would, if of full age, be or become

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Divorced wife.

(*w*) See last note to Form No. 27, p. 274. In *Re Morrieson* (1888), 40 Ch. D. 30; 58 L. J. Ch. 80 (a case on a Will), Kay, J., held that a divorced wife cannot be "a wife" who survives. It is conceived that the form in the text prevents such a question arising, but see *per* Romer, L.J., *Marlborough* v. *M.* [1901], 1 Ch. at p. 173; 70 L. J. Ch. 244.

(*x*) Generally the settlors reserve to themselves absolute powers to create family charges, see Forms Nos. 27 and 28, pp. 274, 275.

(*y*) See *Re Wise* [1913], 1 Ch. 41; 82 L. J. Ch. 25.

(*z*) Omit the words in square brackets if the daughters take as tenants in common in tail, as in Form No. 15, p. 256.

[indefeasibly (*a*)] entitled under the limitations hereinbefore contained to the possession of, or to a life or entailed interest in remainder immediately expectant on the interest for life of the person making the charge in the same premises), or for the portion or portions of the issue of any such child or children (that is to say)—

(i) the sum of £—— if there shall be only one such child;
(ii) the sum of £—— if there shall be two such children and no more; and
(iii) the sum of £—— if there shall be three or more such children:

The said portion or portions to be vested in and payable to such child or children or issue at such age or time (not previous, in case of a child, to the age of twenty-one years, or being a daughter to marriage under that age), or any one or more exclusively of the other or others of such children or issue, at such age or time (but in case of a child not previous as aforesaid), and if more than one, in such shares and with such provisions for maintenance, advancement and otherwise at the discretion of any persons, and with such trusts over and generally in such manner for the benefit of any such child or children or issue or any of them as the person making the charge shall in manner aforesaid direct:

Maintenance and education.

(2) By the same or any other deed or by Will or codicil (but subject as aforesaid) charge the premises charged with such portions with the payment of any annual sums, not exceeding interest on the principal sum so charged or any part thereof at the rate of £4 per cent. per annum, for or towards the maintenance or education of the child, children or other issue for the time being presumptively entitled thereto until such principal sum becomes payable, such annual sums to be clear of all deductions except for income tax,(*b*) and to commence from such time, and to be raised, paid and applied in such shares and manner as the person making the charge shall in manner aforesaid direct:

Advancement.

(3) By the same or any other deed or by Will or codicil (but subject as aforesaid) charge the premises with any sums not exceeding together one-half of the presumptive portion of any son or other male issue, to be raised for his advancement or benefit, so that the amount raised be taken in part discharge of the portion in respect of which it is raised in case such son or

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(*a*) See as to the use of the word "indefeasibly" note to Form No. 22

(*b*) See notes to Forms Nos. 8 and 13.

other male issue eventually becomes entitled to a portion; And every sum charged as lastly provided for the advancement or benefit of a son or other male issue shall be paid in such manner or applied at the discretion of such persons as the person making the charge shall in manner aforesaid direct:

Power to appoint a term.

(4) BY the same or any other deed or by Will or codicil (but subject as aforesaid) appoint the premises so charged for any equitable term of years without impeachment of waste Upon usual trusts by mortgage, sale or otherwise, to raise the principal and interest and annual and other sums charged, and all costs of raising the same: PROVIDED that all principal money so charged as aforesaid shall be paid in the first instance to the trustees of such term (if any) and their receipts shall be a complete discharge therefor:

Receipts.

Charge to be contingent.

(5) ANY principal, interest or annual sum charged under the power aforesaid shall not become a lien upon the premises or any part thereof, or be payable unless and until either the person making the charge shall be or become entitled to the possession or to the receipt of the rents and profits of the premises hereby settled or some issue of that person shall or if of full age would be so entitled:

Maximum capital sum.

(6) THE premises or any of them shall not under the power lastly hereinbefore contained become ultimately liable to the payment of principal money in excess of the sum of £——, but any charges or any part of any charge which, but for this provision, would have occasioned or formed such excess, shall not be raisable out of the premises, and the several principal sums charged shall have the like priority as the interests of the persons by whom they are charged. (*Use power to accept new term, Form No. 32, post.*)

SECTION VI.

Powers (in Trust Instruments) to Release Rentcharges and Surrender Terms.

No 31.

Power for females restrained from anticipation to release their rentcharges.(c)

EVERY female who under the limitations hereof or under any exercise of the powers of charging herein contained shall be or become entitled (whether absolutely or contingently or in possession or reversion) to any rentcharge may—

(i) notwithstanding any restraint on anticipation imposed upon her, and

Object of enabling

(c) This power enables a woman to release a rentcharge in consideration of a new one being limited to her on a resettlement or to postpone it (see

(ii) on being satisfied that sufficient provision is or will otherwise be made for her (subject to the like restraint on anticipation) in substitution for any rentcharge or security released or postponed,

release every such rentcharge or all or any of the property thereby affected or postpone the priority of the rentcharge as respects the whole or any part of the property affected in such manner as she may think fit.

No. 32.

Power for the Trustees of a term to surrender any property comprised in the term in certain events.

Variations where several terms may be subsisting.

(1) SUBJECT to any mortgage which may have been made for raising any money under the trusts of any term created under any limitation or power herein contained the trustees of any such term upon being reasonably satisfied—

(i) that the property intended to remain subject to the trusts of the term will be amply sufficient to answer all the purposes of the term, or

(ii) that other property of sufficient value to answer the purposes aforesaid has been or will be or become vested in the trustees,

may surrender or release all or any of the property for the time being subject to the trusts of the term :

(2) THE trustees shall not in or about the exercise of this power be liable to account by reason only of any mistake made in good faith as to the value of the property or otherwise :

(3) A purchaser, or other person dealing for valuable consideration in money or money's worth shall (subject to express notice to the contrary) be entitled—

(i) on the production of any deed purporting to be a surrender or release of any of the property comprised in the term, and

(ii) if such deed was duly executed by the trustees,

to assume that the same was duly carried out after all proper valuations had been made.(d)

S. L. Act, 1925, s. 16) when money is being raised to pay portions. If the rentcharge is in favour of a married woman restrained from anticipation, the Court can remove the restraint where it considers the removal is in the interest of the married woman : L. P. Act, 1925, s. 169.

rent-charges to be released.

(d) As to the powers of trustees not expressly authorised to discharge part of the property comprised in a term on being satisfied with the remaining security, see Lewin, 12th ed., 742 ; Davidson, 4th ed., Vol. 2, Part II, 285 ; *Pell* v. *De Winton* (1858), 6 W. R. 179. After 1925 a purchaser of the settled land will not usually be concerned with portion terms and similar equitable interests, *secus* a purchaser of a life interest, remainder or other equitable interest.

Power to surrender term under general law.

SECTION VII.

Settlement (*by Trust Instruments*) *of Investments, Policies and Heirlooms.*(*e*)

No. 33.

Declaration of trusts of money and investments to devolve with settled land.

THE Trustees shall stand possessed of the money and investments mentioned in the —— Schedule hereto, which have on or before the execution hereof been paid or transferred or caused to be paid or transferred to the Trustees by the said —— (*settlor*), Upon, &c. (*take Form No.* 36, *p.* 283).

No. 34.

Appointment of investments and capital money.(*f*)

IN exercise of the power for this purpose conferred by the Disentailing Assurance and of all other powers, the said —— (*father*) and —— (*son*), As Settlors, hereby appoint [that the trustees of the Settlement of —— shall, as soon as possible, transfer (*g*)] to the Trustees

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Pure personalty dealt with separately from land.

(*e*) All interests in land to be settled should be vested in the estate owner (*i.e.*, the tenant for life or statutory owner) and will be dealt with together. Any requisite conveyance of a legal estate will be included in the vesting instrument, while appointments of equitable interests will be made by the trust instrument. On the other hand, pure personalty (*e.g.*, money, investments, policies and heirlooms) must be vested in the trustees of the settlement and not in the tenant for life.

Words of limitation.

Words of limitation were never necessary to transfer an absolute interest in investments or other personal estate though notionally converted into land by a trust to purchase: *Re Monckton* [1913], 2 Ch. 636; 83 L. J. Ch. 34; see now L. P. Act, 1925, s. 60.

(*f*) It is assumed that the capital money under the previous settlement was disentailed and limited upon such trusts as father and son should appoint, discharged from liability to be invested in land. Form No. 38, p. 285, should also be used when the investments cannot be transferred at once.

Trustees of the compound settlement to hold the investments.

The S. L. Act trustees of the prior settlement will not make over the capital money and investments to the trustees of the subsequent settlement till the family charges (if any) under the prior settlement have been cleared; the trustees of the prior settlement must act as the trustees of the compound settlement so long as it subsists: S. L. Act, 1925, ss. 1 and 31. If there are no S. L. Act trustees of the prior settlement, the trustees of the instrument under which there is a tenant for life will be the trustees of the compound settlement: L. P. (Amend.) Act, 1926, Sch. (amending s. 31, *supra*). And see *Re Cradock* (1926), W. N. 179. The trustees of a prior instrument will be preferred to those of a subsequent instrument, having become trustees of that and the subsequent instruments, they will, in default of trustees of a prior instrument, become trustees of the entire settlement.

(*g*) These words will be required if the trustees of the previous settlement and the resettlement are not the same persons.

Same persons to act as trustees of all the instruments.

It saves costs, in avoiding transfers of investments, if the same persons are appointed to act as S. L. Act trustees of each of the instruments. If the original trustees do not desire to act as trustees of the new settlement they should retire from the trusts of the prior settlement before the new settlement is made, and the persons who are to act as trustees of the new settlement should be appointed to be trustees of the prior settlement.

ALL AND SINGULAR the money and investments mentioned in the —— Schedule hereto, and all other (if any) the money and investments which or the produce of which were immediately before the execution of the Disentailing Assurance [*or if the investments are to remain as capital money on account of existing family charges which are not released, say* "are"] liable to be held on the same trusts as the land comprised in the Settlement of ——,

To be held by the Trustees (*take Form No.* 36, *infra, or where capital money and investments alone are settled in the first instance, Form No.* 37, *infra*).

No. 35.

Assignment of policies to be held as capital money.

THE said —— (*settlor*), As Settlor, hereby assigns (*h*) unto the Trustees

ALL those policies of assurance on his own life mentioned in the —— schedule hereto, and the respective sums thereby secured, and all other money to become payable thereunder, and the full benefit of the said policies:

To have and receive the same unto the Trustees absolutely, UPON TRUST to get in and receive all money to become payable under the said policies, and after payment of the costs incidental thereto, to stand possessed of the net money (*take Form No.* 36, *post, or Form No.* 37, *infra, as required*).

No. 36.

Trusts of personalty to go along with settled land.(*i*)

UPON the trusts and subject to the powers and provisions upon and subject to which capital money arising under the Settled Land Act, 1925, from the [freehold] land hereby settled [or investments representing the same] would be held.

No. 37.

Trust to lay out capital money and

(1) UPON TRUST that the Trustees shall, with the consent of any tenant for life hereunder or statutory owner, or if there shall be no such person, then at the discretion of the Trustees either

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(*h*) Notice in writing of the assignment must be given to the assurance societies. A recital should be inserted stating that "the settlor is entitled to the policies on his own life hereinafter mentioned and assigned." In the case of a voluntary settlement of policies the stamp is on the surrender value of the policies at the date of the settlement and not on the whole policy money.

Direction to lay out in the purchase of land unnecessary.

(*i*) It is no longer necessary to direct the money or personal estate to be laid out in the purchase of land to be settled on the same limitations as the settled land; it is sufficient to declare the trusts by reference to capital money arising under the Act from the land settled by the instrument in question, or to declare that it shall be held on trusts corresponding with the limitations of the land: S. L. Act, 1925, s. 78 (1) (2), which meets the decisions in *Re Walker* [1908], 2 Ch. 705; 77 L. J. Ch. 755; *Re Aspinall* [1916], 1 Ch. 15; 85 L. J. Ch. 102; *Re Twopeny* [1924], 1 Ch. 522; 93 L. J. Ch. 323. Though the sub-section is retrospective, it does not prejudice the rights of purchasers for value acquired before 1926: L. P. (Amend.) Act, 1926, Sch.

investments in the purchase of land to be settled in strict settlement.

retain any investments in their present state of investment or sell or convert into money so much of the premises as shall not consist of money and shall with the like consent or at the like discretion lay out the net money arising thereby and so much of the premises as may consist of money in the purchase of freehold property in or arising in England or Wales to be settled by means of the requisite instruments (*j*) Upon the trusts and subject to the powers and provisions hereinafter declared or directed.

(2) NOTWITHSTANDING that the Trustees shall with such consent or at such discretion as aforesaid have power to retain such investments as aforesaid or to invest the premises in any of the interim investments hereinafter authorised all the premises shall as from the date hereof be deemed to be primarily liable to be laid out in the purchase of freehold property as aforesaid to be settled in manner hereinafter directed and shall be impressed with a trust for conversion into land accordingly.

(3) THIS deed shall be construed in like manner as if the premises had immediately upon the execution hereof been invested in the purchase of freehold property, and references to "the premises hereby settled" and other like expressions shall have effect as if freehold property had by a vesting deed and a trust instrument been settled upon the trusts hereinafter mentioned.

(4) THE freehold property hereinbefore directed to be purchased shall be settled Upon the trusts, &c. (*Take Form No.* 7, *p.* 249, *and continue the limitations in the same way as if land had been settled, add the requisite trusts of terms, powers of charging, appoint S. L. Act trustees, and add such further provisions as, having regard to any lands which are ultimately intended to be settled* (*k*) *may be deemed requisite.*)

Principal and subsidiary vesting instruments.

(*j*) When land is first acquired, there being no other settled land in regard to which a principal vesting instrument is in force, then a principal vesting instrument must be used: S. L. Act, 1925, s. 10 (1), proviso. Where land has already been settled and further land is acquired, then a subsidiary vesting instrument (referring to the principal vesting instrument) must be employed: *ib.*, s. 10.

Where vesting deeds are not required.

Where land is already subject to a vesting instrument a new trust instrument only will be required to vary the trusts, save that if this involves a change in the ownership of the life interest then there must be a conveyance of the legal estate to the new tenant for life by means of a vesting instrument. The penalty for not using a vesting instrument is that the legal estate does not pass: S. L. Act, 1925, s. 4 (1); this does not apply when only equitable interests are being dealt with.

Scheme for evading stamp duty.

(*k*) See Chap. III, Sect. II, p. 76, *et seq.*, *supra*, describing scheme for

No. 38.

Capital money to be paid to trustees of re-settlement after termination of old settlement.(*l*)

If at the death of the said —— (*father*) there shall be standing in the names or under the control of the trustees for the purposes of the Settled Land Act, 1925, of the Settlement of——, any money or investments liable to be laid out in the purchase of land to be settled as aforesaid, such money and investments shall (after the failure, cesser or discharge of all interests, powers or charges subsisting under the said Settlement and having priority over the trusts, powers and provisions herein contained) be paid and transferred to the Trustees whose receipt shall be a complete discharge for the same, and shall be held by the Trustees Upon, &c. (*take Form No.* 36, *p.* 283).

No. 39.

Assignment [or Appointment] and settlement of Heirlooms referred to in a schedule.

(1) The [Husband] said —— (*settlor*), As Settlor, hereby assigns unto the Trustees

All and Singular the chattels and effects referred to in the Inventories mentioned in the —— Schedule hereto.

To have and receive the premises unto the Trustees absolutely, Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same:

[*or* (1) In exercise of the power for this purpose conferred by the Disentailing Assurance and of all other powers, the Father and Son, As Settlors, hereby appoint [that the trustees of the Settlement of —— shall as soon as possible transfer] to the Trustees:

All and singular the chattels and effects referred to in the Inventories mentioned in the —— Schedule hereto

To be held by the Trustees Upon the trusts hereinafter mentioned.]

Trusts of the Heirlooms. (*m*)

(2) The Trustees shall stand possessed of the said chattels and effects lastly hereinbefore assigned [appointed] (hereinafter, with any other chattels which may be substituted therefor,

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evading the £1 p. c. *ad valorem* stamp duty on a voluntary resettlement of land; also p. 99, *supra*, for note on stamp duties.

(*l*) This Form is required where by reason of family charges subsisting under the old settlement the trusts of that settlement cannot be wound up. A settlement remains in force so long as any limitation charge or power of charging subsists or during a minority, provided that the land does not become subject to a trust for sale: S. L. Act, 1925, s. 3; L. P. (Amend.) Act, 1926, Sch. See also *Re Cowley S. E.* (1926), W. N. 202.

Heirlooms. Entail or sale of.

(*m*) Chattels can now be entailed: L. P. Act, 1925, s. 130; it is sufficient to direct the chattels to be enjoyed or held with or upon trusts corresponding to trusts affecting the land: *ib.*, s. 130 (3). If the chattels are settled without reference to settled land, the trustees, with the consent of the usufructuary, can sell them: *ib.*, sub-s. (5). If the chattels are settled to devolve with settled land, the tenant for life can sell them with the leave of the court and the called the Heirlooms), UPON TRUST to allow the Heirlooms to devolve and be enjoyed, as heirlooms, along with the land hereby settled, or any mansion or other houses hereby settled in which the same may be placed; and not so as to become subject to any power of charging herein contained.

Sales and other dealings with the Heirlooms and consequent alterations in the Inventories or preparation of new Inventories.

(3) A SALE of the Heirlooms or any of them, and any other heirlooms for the time being subject to the trusts hereof, and a purchase of other chattels, may be made under section sixty-seven of the Settled Land Act, 1925 [with the consent of the Trustees], without any order of the Court,(*n*) and the tenant for life may direct the Heirlooms to be kept in such mansion houses and other places as he thinks fit, and may exchange the Heirlooms or any of them, or alter the form or fashion thereof, or substitute other articles therefor at his own expense, so nevertheless that before making such alteration or substitution the tenant for life shall obtain the opinion of some valuer appointed by him that the proposed alteration or substitution will not diminish the value of the Heirlooms for the time being subject to the trusts hereof; And upon every sale, purchase, exchange or substitution of Heirlooms the Inventories mentioned in the — Schedule hereto shall be altered and signed in duplicate by the tenant for life and the Trustees, and one copy of each shall be kept by the tenant for life for the time being entitled to the use and possession of the Heirlooms and the other by the Trustees, or new Inventories referring only to the Heirlooms for the time being subject to the trusts hereof may be prepared at any time, signed in duplicate, and copies kept in place of the original Inventories at the cost of the trust estate, and thereupon the original Inventories may be destroyed; and the new Inventories so signed as aforesaid shall be con-

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net proceeds can be applied as capital money or may be laid out in the purchase of other chattels: S. L. Act, 1925, s. 67.

The difficulties raised in *Scarsdale* v. *Curzon* (1859), 1 J. & H. 40; 29 L. J. Ch. 249, and in *Re Angerstein* [1895], 2 Ch. 883; 65 L. J. Ch. 57; see also *Re Fothergill* [1903], 1 Ch. 149; 72 L. J. Ch. 164; *Re Dayrell* [1904], 2 Ch. 496; 73 L. J. Ch. 795; *Re Chesham* [1909], 2 Ch. 329; 78 L. J. Ch. 692; *Re Parker* [1910], 1 Ch. 581; 79 L. J. Ch. 161, no longer apply where the heirlooms are entailed; nor, where the settlement contains a name and arms clause or shifting clause, is it necessary to vary the trusts, for the cesser or shifting clause will be barred when a disentailing assurance is executed.

Beneficial interests, not affected by sale.

(*n*) See *Re Hope* (1910), 26 T. L. R. 413. The effect of the power of sale in the Act in certain cases under the old law altered the devolution of the property—*e.g.*, where the proceeds of sale were applied in discharge of incumbrances on, or, *semble*, improvements to, or the purchase of, freeholds; but now that the heirlooms are entailed this will not occur.

clusive evidence as regards all persons interested hereunder as to what chattels for the time being are held as Heirlooms on the trusts hereof, and upon any change in the Heirlooms the new Inventories shall be altered and re-signed as aforesaid or new Inventories made, as may be convenient:

Receipts to be signed by usufructuaries when Heirlooms are handed over to them.

(4) After the death of any tenant for life, and upon the Heirlooms being handed over to the person for the time being entitled to the use and possession thereof, such person shall sign a receipt for the same at the foot of the copy of each Inventory retained by the Trustees:

Power for Trustees to inspect Heirlooms and see to insurance and preservation, and to make arrangements as to the Heirlooms during a minority.

(5) The Trustees are hereby empowered from time to time to inspect and examine the state of the Heirlooms and to require (subject to the provisions hereinafter contained as to insurance) that the same be insured (o) against loss or damage by burglary, theft or fire, so far as they are capable of being so insured, and to be otherwise properly preserved, and to be restored and repaired at the expense of the usufructuary thereof for the time being, but except during a minority or at any other time while the Heirlooms are in the actual custody of the Trustees, it shall not be obligatory on the Trustees to inspect and examine the Heirlooms or to require that the same be insured, preserved, restored or repaired; but during a minority the Trustees may apply any rents, profits and income of the premises hereby settled for any of the aforesaid purposes, or for paying any persons for acting as custodians of the Heirlooms, and may at their discretion, without being liable to account for any loss which may arise by reason of the exercise of such discretion, permit any person who, if of full age, would be entitled to have the use and enjoyment of the Heirlooms, or his guardians, to have such use and enjoyment of the Heirlooms, or any of them, during the minority of such person, or may permit the Heirlooms to be kept in any mansion house or other place in which they have hitherto been kept and to be used and enjoyed therewith:

Insurance of heirlooms.

(o) Apart from this direction the trustees can, under T. Act, 1925, s. 19, insure out of income if the tenant for life refuses to do so: *Re E. of Egmont* [1908], 1 Ch. 821; 77 L. J. Ch. 479. Where chattels had been insured out of income by trustees during the minority of a tenant for life, he was formerly entitled to the policy money: *Re Quicke* [1908], 1 Ch. 887; 77 L. J. Ch. 523. After 1925 the insurance money will be treated as capital belonging to the trust where it is maintained under any trust or under any power or obligation, statutory or otherwise, or by a tenant for life who is impeachable for waste: T. Act, 1925, s. 20. When obtained in respect of heirlooms it is applicable as capital money arising under S. L. Act, 1925, s. 67 (2).

Application of insurance money.

Protection to the Trustees and application of insurance money.

(6) So long as the Heirlooms have been handed over to the person for the time being entitled to the use and enjoyment thereof, or to such infant or guardians as aforesaid, or to the persons occupying such mansion houses or other places as aforesaid, the Trustees shall not be liable in any way for any theft, loss, damage or depreciation or for any omission or any unauthorised dealing therewith or disposition thereof, nor shall the tenant for life or other person having the use and enjoyment of the Heirlooms be liable for any theft, loss or damage if he complies with the provisions herein contained as to insurance and repairs; but all money received in respect of any such insurance shall, until the same is laid out in acquiring other chattels to be held as Heirlooms or in restoring any Heirlooms, be treated as capital money arising from the [freehold] property hereby settled:

Settlement not to be registered as a bill of sale of the Heirlooms.

[(7) THIS Deed is not to be registered as a bill of sale of the Heirlooms (*p*)]:

Power to let Heirlooms.

(8) THE Heirlooms, or any of them, may be let, together with any mansion house or other house for the time being subject to the limitations hereof in which any Heirlooms may be kept, by the persons (if any) for the time being entitled to let such mansion or other house, provided that the Tenant signs an inventory and covenants or agrees with the tenant for life or the Trustees, as the case may require, to keep the same in repair during his tenancy, and not to assign, underlet or part with his interest under such tenancy without the consent in writing of the tenant for life or the Trustees, as the case may require, and during any such tenancy neither the tenant for life nor the Trustees shall be liable for any loss, damage or depreciation in respect of the Heirlooms delivered to the Tenant. (*q*)

No. 40.

Clause where farming live and dead stock are assigned to the Trustees on trust for sale, the proceeds to be held as capital money.

THE following provisions shall have effect with respect to the farming live and dead stock, and effects hereinbefore assigned on trust for sale, and to any other similar stock purchased under the power for that purpose hereinafter contained (hereinafter called the Farming Stock) (that is to say):—

(1) So long as any tenant for life in possession hereunder

Short form relating to Heirlooms.

(*p*) The words in square brackets are not required in the case of a marriage settlement, which is excepted from the operation of the Bills of Sale Act, 1878, see s. 4.

(*q*) If the chattels are settled by way of trust for sale or a short form is desired, Form 3 of the Statutory Will Forms, 1925 (relating to inventories) can be incorporated by express reference to that form.

shall be of full age and capacity the Farming Stock shall not be sold or otherwise dealt with without his consent:

(2) UNTIL sale the person (if any) of full age for the time being entitled to possession or to the receipt of rents and profits of the premises hereby settled shall be entitled to the use of the Farming Stock, and shall have power to exchange or dispose of any of the Farming Stock on replacing articles or stock of the like nature and of equal or greater value, and shall provide for the repair and safe custody and upkeep of the same at his own expense:

(3) EXCEPT during a minority the Trustees shall not be concerned to see to the repair, safe custody or maintenance of the Farming Stock, nor be liable for any loss, damage or depreciation to the same or in respect of any unauthorised dealing with or disposition of the Farming Stock or any part thereof:

(4) ON the death of any tenant for life or in tail in possession, if his personal representatives shall hand over to the Trustees Farming Stock equal in value (according to a valuation made in the usual way) to the sum of £—— (being the agreed value of the Farming Stock hereby settled), together with the value (estimated according to the purchase price) of any Farming Stock purchased under the power for that purpose hereinafter contained, and after deducting from such gross value any money paid to the Trustees in respect of sales of Farming Stock, such handing over of Farming Stock as aforesaid shall be a sufficient discharge to the estate of the deceased tenant for life or tenant in tail:

(5) IN case the Farming Stock so handed over shall, in the opinion of the Trustees, be insufficient in value, then the deficiency (the amount whereof shall be determined by the Trustees) shall be made good in money out of the estate of the deceased:

(6) ANY capital money arising from the sale of any Farming Stock may from time to time be laid out in the purchase of other stock of a like nature:

(7) IT shall not be necessary to make or keep any Inventories of Farming Stock.

SECTION VIII.

Provisions extending the S. L. Act, 1925.

No. 41.

Term to merge in reversion acquired (Trust instrument).

IF and whenever the immediate reversion in fee simple of any leasehold property for the time being subject to the trusts hereof shall be purchased, or otherwise made subject to the trusts hereof, then and in every such case the term shall be merged by the estate owner of the settled land in the freehold, unless the court otherwise directs.(r)

No. 42. Provisions as to obtaining renewal (s) of leases (Trust instrument).

THE estate owner of the settled land may from time to time, as occasion requires, obtain, on the authorised terms, the renewal of any leasehold interest subject to the trusts hereof which (so far as the law permits) is capable of renewal; And may make, execute and do all such surrenders, assurances and things as may be expedient for effectuating any renewal as aforesaid, but shall not be chargeable for a breach of trust by reason of any omission or neglect to obtain any renewed lease; And the fines and expenses of renewals may be paid out of capital money, subject to the trusts hereof, without any apportionment being required between tenant for life and remainderman,(t) and section seventy-one of the Settled Land Act, 1925, shall be deemed to authorise the raising of such fines, expenses and the costs of raising the same:

No. 43. Introductory clause as to additional or larger powers which need not be inserted in the vesting instrument. (u)

THE following additional or larger powers shall, for the purposes hereof, take effect in accordance with section one hundred and nine of the Settled Land Act, 1925, as if conferred by that Act (that is to say):—

No. 44. Interim investment of capital

CAPITAL money arising under the Settled Land Act, 1925, or the powers herein contained, or money representing surplus rents and profits during a minority, or any other money liable

Abolition of perpetually renewable leases.

(r) This is merely to prevent any question arising on S. L. Act, 1925, s. 73 (1) (xi) and (xii), as to whether the term ought to be kept on foot; for the converse case: *ib.*, s. 73 (1) (xiv).

(s) As to the restrictions on renewal of leases: L. P. Act, 1922, 15th Sch., paras. 5 to 8. There are no perpetually renewable leases or underleases left: *ib.*, 15th Sch., hence T. Act, 1893, s. 19, has not been reproduced.

A tenant for life has power (so far as the law permits) to grant a lease by way of renewal: S. L. Act, 1925, s. 43, or to confirm a lease: *ib.*; these powers are also exercisable by personal representatives and by trustees holding on trust for sale. He has also power to accept a lease: *ib.*, s. 53.

(t) As to how, under the old law, the expense was ultimately borne as between tenant for life and remainderman: *Re Baring* [1893], 1 Ch. 61; 62 L. J. Ch. 50; *Re Wix* [1916], 1 Ch. 279; 85 L. J. Ch. 192; see also Lewin, 12th ed., 440, and article in (1899), 15 L. Q. R., 378.

(u) As a rule additional powers will not be required. The draftsman will select such (if any) of the Forms under this heading as may be required; only the additional powers (S. L. Act, 1925, s. 109 (2)) relating to the settled land (*i.e.*, those affecting a purchaser, mortgagee or lessee) have to be set out in the vesting instrument. A separate list of these is given later. It is no longer necessary to introduce the provisions of the Interpretation Act, 1889: see L. P. Act, 1925, s. 61. In some cases it may be convenient to schedule the powers, in which case there will be a reference to the schedule instead of the "following" additional powers.

to be invested under the trusts hereof, may be invested in the names or under the control of the Trustees—

money(v) (Trust instrument). Investment clause.

(1) (i) In or on any investments for the time being authorised as investments for trust money; or

(ii) On real or leasehold securities in England, Wales or Northern Ireland [or in any British Dominion, Colony, State or Dependency] but not in the Irish Free State (whether by way of registered charge or otherwise [or subject to incumbrances or not]); or

(iii) In or on the stock or securities of any British Dominion, Colony, State or Dependency (other than the Irish Free State) or any province thereof or any foreign Government or State (except Russia), or of any municipal corporation, power, gas, electric light, harbour or local authority in England, Wales or Northern Ireland or in any British Dominion, Colony, State or Dependency (other than the Irish Free State); or

(iv) In or on the bonds, mortgages, debentures or debenture stock [or guaranteed or preference [or ordinary] stock or shares] of any [railway, tramway, canal, water, dock, harbour, electric light or power, gas or other like] company, public or private, incorporated in the United Kingdom, or any British Dominion, Colony, State or Dependency, under the Companies Acts or under any special Act of the Imperial Parliament or of any general or special Act of the Legislature of any British Dominion, Colony, State or Dependency or by Royal Charter, and whether trading or otherwise carrying on business in Great Britain, India, or any British Dominion, Colony, State or Dependency [or elsewhere] which shall have paid dividends [at the rate of at least £— per cent. per annum] on its ordinary stock or shares for at least three years prior to the date of investment; or

(v) On the security of any life or contingent interest in any real or personal property, together with an insurance on the life or other event;

Additional powers to acquire leaseholds and effect sinking fund policy.

(2) In the purchase or acquisition of leasehold interests in land in England [or] Wales [or Northern Ireland] held for a term of which not less than forty years is unexpired at the time of purchase, provided that where the term has less than sixty years to run at the time of acquisition a sinking fund policy shall be effected in the names of the Trustees, and maintained

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(v) See S. L. Act, 1925, s. 73. This is a wide range clause, which can readily be cut down to meet the circumstances of each case.

out of income for securing payment at the expiration of the term of a sum equal to the amount of the capital money expended in acquiring such interest and such further sum as the trustees may think sufficient to discharge dilapidations;

Insurance money.

(3) All money received in respect of any such insurance shall (after discharging claims for dilapidations) be held as capital money for the purposes hereof, and if any such leasehold interests are sold the policy in respect thereof shall be sold therewith.

No. 45.

Purchase not limited to England.(*w*)

CAPITAL money subject to the trusts hereof may be applied in the purchase of land in Northern Ireland.

No. 46.

General extension of authorised improvements.(*x*)

IMPROVEMENTS on which capital money may be expended shall, for the purposes hereof, include any improvement or work from time to time authorised at the request of the tenant for life by the Trustees as being likely to permanently enhance the

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(*w*) See S. L. Act, 1925, s. 73 (2); *Re Gurney* [1907], 2 Ch. 496; 76 L. J. Ch. 609.

Position of trustees in regard to investments.

The trustees are not bound to follow the directions of the tenant for life if they have evidence that the investment is undesirable: *Re Hunt's S. E.* [1906], 2 Ch. 11; 75 L. J. Ch. 496; but they are safe if the security is authorised: S. L. Act, 1925, s. 98 (1); nor are they liable for the acts of his agent or for not employing a separate agent, though they may still select their own broker: *Re D. of Cleveland's S. E.* [1902], 2 Ch. 350; 71 L. J. Ch. 763, *semble*, it is safer to rely on the broker of the tenant for life: *ib.*, s. 98 (1).

The trustees are not bound to invest on mortgage unless satisfied that the direction of the tenant for life was given upon a proper investigation of title, a proper report as to value, and proper advice as to the form of mortgage: *Re Hotham* [1902], 2 Ch. 575; 71 L. J. Ch. 789, but they are not bound to employ a separate agent in or about the valuation of the security or the investigation of the title thereto, nor are they liable in regard to the form in which the security is taken: *ib.*, s. 98 (1).

Custody of title deeds.

They are not liable on account of any vesting instrument or other documents of title relating to the settled land (other than securities for capital money) being placed in the possession of the tenant for life: *ib.*, s. 98 (3). As owner of the legal estate in the settled land, he becomes entitled to these deeds.

Endorsement.

But, before they hand them over, notice of the principal vesting instrument may have to be endorsed in cases within the proviso to that sub-section.

Old law.

As to the old law respecting the rights of a tenant for life to have the deeds, see *Re Burnaby's S. E.* (1889), 42 Ch. D. 621; 58 L. J. Ch. 664; *Re Wythes* [1893], 2 Ch. 369; 62 L. J. Ch. 663; *Re Beddoe* [1893], 1 Ch. 547; 62 L. J. Ch. 233; *Re Newen* [1894] 2 Ch. 297; 63 L. J. Ch. 763.

Charitable purposes.

Under S. L. Act, 1925, s. 55, the usual powers to grant land for charitable purposes are given, it will seldom be necessary to extend them. See also as to open spaces: *ib.*, s. 56, and as to small dwellings, &c.: *ib.*, s. 57.

Compromises and arbitration.

As to the power to compromise and submit matters to arbitration: *ib.*, s. 58.

Improvements authorised.

(*x*) As to the improvements now authorised, see S. L. Act, 1925, 3rd Sch.: Pt. I sets out those the costs of which are not liable to be replaced by instalments; Pt. II sets out those the costs of which the trustees or the court may require to be replaced by instalments, while the costs of those in Part III *must* be replaced by instalments. Sections 83 to 89 now contain the code value of the premises hereby settled, as well as all improvements authorised by the Settled Land Act, 1925:

Provided that the Trustees may, as respects any improvement not authorised by that Act, by writing declare that the costs thereof are to be repaid as if the improvement were mentioned in Part III of the Third Schedule to that Act.

No. 47.

Specific extension of authorised improvements.

IMPROVEMENTS, &c. (*as above*), include, besides the improvements authorised by the Settled Land Act, 1925, the following improvements and works, namely:—(*Here set out any further contemplated improvements which are not covered by the Act, and add the proviso at the end of last Form.*)

No. 48.

No part of mining rent to be capital. (*y*)

Variation where the tenant for life is to account for but receive the whole rent.

(1) THE whole of the rent and royalties under every lease for mining purposes shall be received and may be retained by the person for the time being entitled to the receipt of the rents and profits of the premises hereby settled, or shall otherwise be applied as income (*z*) [*or* THE whole, &c., may be received in the first instance by the tenant for life, who shall be liable to account to the Trustees in accordance with section forty-seven of the Settled Land Act, 1925, but the lessee shall not be concerned to see to the application of any money paid to the tenant for life];

Compensation for subsidence and damage.

(2) CAPITAL money may be applied in payment of compensation for subsidence or other damage, which may have occurred or arisen, or which may at any time hereafter occur or arise by reason of any act or default (whether committed or to be committed) by any tenant for life hereunder or his predecessors in title, or any of his or their respective lessees or agents, and the

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Scheme unnecessary.

Certificate of expert or order of court.

relating to improvements. It is not essential that a scheme should first be submitted to the trustees or the court: s. 84 (1). Either a certificate of an engineer or surveyor employed independently of the tenant for life as to the proper execution of the work and the amount payable or an order of the court is required to protect the trustees: *ib.*, s. 84 (2); they may (except as to those authorised by Pt. I of the 3rd Sch. or by the Settlement) require repayment by instalments; *ib.*; the court has similar powers under s. 84 (4). The repayment is secured by rentcharges: s. 85.

Raising of money.

Capital money can be raised for discharging the costs of improvements under *ib.*, s. 71; but the court cannot extend the range of improvements under *ib.*, s. 64.

Golf course.

A golf course is an authorised improvement: *Re De La Warr's S. E.* (1911), 27 T. L. R. 534.

(*y*) See S. L. Act, 1925, s. 47.

Stamp in respect of determinable rentcharge to be accumulated.

(*z*) If a rentcharge contingent on the amount of the royalties received is limited to the trustees for accumulation in lieu of the payments under s. 47, and there is a provision for the cesser of the rentcharge, when a maximum sum has been set aside as capital, the Inland Revenue claim the *ad valorem* settlement stamp duty on the maximum sum to be set aside, though it is difficult to see how the claim can be upheld.

tenant for life shall have power to direct compensation to be paid notwithstanding that a doubt may be entertained whether the claim therefor is enforceable.

No. 49.

As to licensed property.

THE tenant for life may at his discretion either surrender any licence connected with any hotel, publichouse or other licensed property from time to time subject to the limitations hereof which by reason of the duties imposed thereon he may consider it undesirable to retain, or may pay all duties required for renewing or keeping on foot any such licence, notwithstanding that the amount of the duties may be in excess of the enhanced value of the property attributable to the existence of the licence, whether with a view to the ultimate reduction of such duties or not, and may take or defend any proceedings in connexion with any licensed property or the licences or duties connected with the same:(*a*)

No. 49A.

Dealings with mansion house.(*b*)

(1) NOTWITHSTANDING section sixty-five of the Settled Land Act, 1925, a principal mansion house and the pleasure grounds, park and lands, if any, usually occupied therewith, may not be disposed of without the consent of the Trustees or an order of the court:

PROVIDED that a purchaser, mortgagee, lessee or other person dealing for value with the tenant for life or statutory owner shall not be concerned to see or enquire whether or not any such consent or order has been obtained.

(2) Any part of a mansion or other house may be pulled down with the consent of the Trustees with a view to providing a residence which, having regard to the net annual income of the premises hereby settled, can in the opinion of the Trustees be adequately maintained;

(3) THE costs of converting a mansion or other house into a residence which can, having regard to the circumstances of the case, be occupied by the tenant for life and of providing the requisite fittings and fixtures, may with the consent of the Trustees be discharged out of capital money.

No. 50

As to liability of the Trustees to show that the

(1) AFTER three years from the time when any application or investment of capital money shall have been made, the Trustees

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(*a*) This clause should only be used where licensed property is subject to the limitations of the settlement.

Mansion house.

(*b*) Under S. L. Act, 1925, s. 65, the mansion, &c., can, where the settlement is made after 1925, be disposed of without a consent or order, unless the settlement expressly provides to the contrary. If a purchaser, &c., is not concerned to see whether a consent or order has been obtained, it is not necessary to refer to this clause in the vesting instrument.

shall not be bound to show that the same was made in accordance with the directions of the tenant for life or shown in any account signed by him, but the same shall (unless objection shall have been taken in the meantime) be deemed to have been so made or shown :

tenant for life has given directions as to application of capital money.

(2) PROVIDED that the Trustees may be required to justify any application or investment made during the minority of a tenant for life within three years from the expiration of the minority, and not after.

No. 51.

Notices dispensed with (Trust instrument).

ANY authorised disposition or option or contract for the same may be made or granted without any previous notice of an intention to make or grant the same being given to any trustee or any solicitor of any such trustee.(*c*)

No. 51A.

Incorporation of additional powers by reference to Vesting Deed of even date.

THE additional or larger powers (relating to the settled land) set out in the recited Vesting Deed of even date herewith shall take effect as if those powers were also set out in this settlement.(*d*)

No. 52.

Introductory clause as to larger powers which must be set out in the vesting instrument.

THE following additional or larger powers in relation to the settled land shall for the purposes hereof take effect in accordance with section one hundred and nine of the Settled Land Act, 1925, as if conferred by that Act (that is to say) :—[*A provision which affects a purchaser, mortgagee or lessee should be set out in the vesting instrument, but not otherwise.*]

No. 52A.

Mansion house; public purposes.

A principal mansion house, with or without any pleasure grounds, park and lands to be used therewith, may with the consent of the Trustees be disposed of for public or charitable purposes at less than the best price or rent.

Notices.

(*c*) As to notices: S. L. Act 1925, s. 101; a person dealing in good faith with the tenant for life is not concerned. At least two trustees or a trust corporation must be acting at the date of the notice, otherwise it will not be valid.

Incorporation by reference, when permissible.

(*d*) This form can only be used when a new settlement *inter vivos* is made by a trust instrument and vesting instrument of even date; where the powers are lengthy, it will save setting them out in full in both instruments; for though S. L. Act, 1925, ss. 4 and 5, speak of the powers being stated in both instruments, there can be no objection to an incorporation in a trust instrument by reference to powers set out in full in the vesting deed, provided that the latter is not handed over to a purchaser.

Simplicity of documents relating to the legal estate.

One of the main objects of the new conveyancing practice is to secure that all documents relating to the legal estate in land shall be simple. No trusts (save a trust for sale) should as a rule be declared by a document transferring or creating a legal estate. All complications affecting the equitable title should be kept behind the curtain as is already done by the register kept under the L. R. Act, 1925, in regard to registered titles.

No. 52B.

Power to fix price, &c., by arbitration.

ANY sale or other disposition may be made at a price or rent to be fixed by arbitration.(e)

No. 53.

Exchanges not limited to England.(f)

THE premises hereby settled or any part thereof may be given in exchange for land in Northern Ireland.

No. 54.

Restrictions in building leases dispensed with.

THE restrictions imposed by sub-section (3) of section forty-four of the Settled Land Act, 1925, shall not apply to any lease or agreement for a lease of the premises hereby settled.(g)

No. 55.

Leases generally.(h)

A LEASE (not otherwise authorised by the Settled Land Act, 1925, or by this Settlement) may be made for any term or for any purpose and subject to such rent and conditions generally as may be approved by the Trustees.

No. 56.

Power to raise money for general capital purposes.(i)

A MORTGAGE of the settled land, or of any part thereof, may from time to time be made under section seventy-one of the Settled Land Act, 1925, for any purpose for which capital money, if in hand, might be paid or applied.(j)

A MORTGAGE of the settled land, or of any part thereof, may from time to time be made under section seventy-one of the

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(e) See *Re E. of Wilton's S. E.* [1907], 1 Ch. 50; 76 L. J. Ch. 37.

Additional or substituted security or security by way of consolidation.

Power is given by S. L. Act, 1925, s. 70, with the consent of the incumbrancer to vary the rate of interest or other provisions of an incumbrance affecting the settled land. Also to give additional security and consolidate securities. Power is given, *ib.*, s. 69, to shift incumbrances with the consent of the incumbrancer.

Exoneration of charges.

Without prejudice to the rights of an incumbrancer, capital and annual sums may, on a disposition, be charged exclusively on part of the land in exoneration of other land: *ib.*, s. 49 (1) (c).

Statutory owners, powers of.

A power expressed to be given to a tenant for life is, if there is no tenant for life, exercisable by the statutory owners: S. L. Act, 1925, ss. 23 and 26.

(f) See S. L. Act, 1925, s. 40 (3). "England" includes Wales.

Grants at perpetual rents, &c.

(g) For the provisions respecting leases, see *ib.*, ss. 41 to 48. The new powers are so wide that it will seldom be necessary to extend them. As to the power to convey in consideration of the reservation of a perpetual rentcharge: *ib.*, s. 39, as amended by L. P. (Amend.) Act, 1926, Sch. This involves a subsidiary vesting deed: *ib.*, s. 10 (3).

(h) This Form will not be required if the powers conferred by s. 64 (transactions generally) are (see Form No. 58, *infra*) made exercisable with the consent of the trustees without an order of the court.

Raising money for death duties.

(i) As to raising money for death duties: L. P. Act, 1925, s. 16 (3); capital money may in the first instance be applied in discharging succession duty, but the capital must be recouped to the trust: *ib.*, s. 18, see also s. 16 (5) as to the liability of the beneficiaries. As to raising money to meet a charge for estate duty: S. L. Act, 1925, s. 71; Fin. Act, 1894, s. 9. The charge of estate duty is automatic: *Lord Advocate* v. *Countess of Moray* [1905], A. C. 531; 74 L. J. P. C. 122. Interest on the duty cannot be raised by mortgage, and must be borne by the tenant for life apart from express directions: *Re Howe* [1903], 2 Ch. 69; 72 L. J. Ch. 461.

(j) This would also enable money to be raised for the purchase of land; and see next Form.

Settled Land Act, 1925, for raising any sums [not exceeding in the whole under this present power the sum of £——], and sums so raised shall after payment thereout of all costs and expenses incurred in raising the same be held Upon the trusts (*continue as in Form No.* 36, *p.* 283).

No. 57. Power to raise limited sum for investment in land, &c.

No. 58. Transactions generally.

(1) WHERE, under the Settled Land Act, 1925, power is given to the tenant for life to enter into or carry out any particular transaction with the consent or approval of the trustees of the settlement, the transaction may be entered into and carried out without any such consent or approval:

(2) WHERE, under that Act, the leave of the court is made requisite to authorise the tenant for life to enter into or carry out any transaction, the transaction may be entered into or carried out with the consent of the trustees of the settlement without any leave of the court, and in particular any transaction which, in the opinion of the trustees, would be for the benefit of the settled land or any part thereof, or the persons interested under the settlement, may be effected under section sixty-four of that Act with the consent of the trustees without any such leave as aforesaid.

(3) THE power conferred by section sixty-six of the Law of Property Act, 1925 (relating to further assurances), may be exercised with the consent of the Trustees without the leave of the court.

No. 59. Powers of attorney.(k)

(1) THE powers to delegate and appoint attorneys conferred by section twenty-five of the Trustee Act, 1925 (as amended), on a tenant for life, a statutory owner, and on each Trustee may be exercised free from the obligations and restrictions imposed by sub-sections (2) to (5) inclusive of the said section, and a power of attorney may be made irrevocable for any period not exceeding one year:

(2) THE tenant for life may, by writing, authorise an agent to sign or execute tenancy agreements in his name creating terms or interests not exceeding three years:

(3) THE donor exercising the said powers in good faith shall not be liable for the acts or defaults of the donee.

(k) The words "or where not executed in the United Kingdom within ten days after its receipt in the United Kingdom" have been inserted in sub-s. (4) of s. 25, by L. P. (Amend.) Act, 1926, Sch. — Powers of attorney.

Powers of attorney relating to land must be filed; a purchaser is entitled either to the original or a copy: L. P. Act, 1925, s. 125 (2), as amended by L. P. (Amend.) Act, 1926, Sch. — Purchaser's rights.

No. 60.

Reference to overriding power of appointment (to be inserted in Vesting Instrument).

The foregoing additional or larger powers are capable of being extended under [a joint] an overriding power of appointment vested in —— (*the father*) [and —— (*the son*)] [*or the settlor or other donee*] by the recited Settlement [Will] during his life [their joint lives].(*l*)

Section IX.

Miscellaneous Provisions in Trust Instruments, &c.(*m*)

No. 61.

Statutory owners may present to livings during minorities.

During the minority of any person who, under the limitations hereinbefore contained, is or would if of full age be entitled for the time being to the possession or to the receipt of the rents and profits of the premises hereby settled as tenant for life or as tenant in tail [male or in tail] by purchase, the statutory owners may present a fit person to any vacant ecclesiastical benefice, either absolutely or subject to such lawful terms (*n*)

Matters not to be referred to in vesting instrument.

(*l*) Where the powers are capable of being enlarged it is expedient to refer to this fact.

Powers to create family charges should not be referred to in vesting instruments; they are part of the limitations of the settlement and effect must be given thereto under S. L. Act, 1925, s. 16 or s. 71, unless the charge is paid off out of existing capital money.

Powers relating to the legal estate.

It is useless to attempt to give powers to deal with the legal estate in the settled land to any person except the tenant for life or statutory owner, for such powers are immediately made exercisable by him: *ib.*, s. 108 (2), though he will be bound to give effect to equitable interests and powers in accordance with *ib.*, s. 16. The powers of "revocation and appointment" referred to in s. 108 (2) take effect as equitable powers: L. P. Act, 1925, s. 1 (7).

Accumulations, destination of.

(*m*) In view of T. Act, 1925, s. 31 (2) (ii), *semble* it is unnecessary to insert any express provision as to the destination of accumulations made during the minority of an unmarried person. A person having a vested life interest who attains twenty-one or marries acquires the accumulations; if on attaining twenty-one or on marriage a person becomes entitled to the capital either in fee simple (absolute or determinable) or absolutely or for an entailed interest he also acquires the accumulations; in other cases they are added to the capital or go as capital money, save that in the case of a vested annuity the accumulations become part of the estate of the annuitant. An infant who marries can give a receipt for accumulations and future income: L. P. Act, 1925, s. 21.

Receipt for accumulations.

Direction to hold as capital money.

A direction to hold accumulations as capital money is not within the prohibition to accumulate for the purchase of land only beyond minorities: *ib.*, s. 166 (2), confirming *Re Danson* (1895), W. N. 102.

Advowsons.

(*n*) See Benefices Act, 1898. An infant of any age could, independently of statute, present to a living: 11 Hals. L. of Eng., 573, After 1925 advowsons (which are on the same footing as land) will be vested during a minority in the statutory owners: S. L. Act, 1925, s. 26. As to the powers of S. L. Act trustees during a minority: *ib.*, s. 102. As to the restrictions on the power of an owner of an advowson to sell or mortgage it, see the Benefices Act, 1898 (Amendment) Measure, 1923. This Form (No. 61) did not make the trustees patrons for the purpose of giving consent on a sale of glebe land. The consent had to be given by the guardian of the infant:

Glebe land.

(if any) as to resignation as the statutory owners deem proper [and generally act as patrons of a living]:

PROVIDED that if the land, subject to the trusts hereof, becomes subject to a trust for sale, the trustees for sale shall have and may exercise the said power.

No. 62.

Lands acquired to be made subject to compound settlement.(*o*)

(1) DURING the subsistence of the recited Settlement, all land acquired with capital money shall, by a subsidiary Vesting Deed, be conveyed to the tenant for life or statutory owners or personal representatives in whom the land hereby settled may be vested to be held (by reference to the principal vesting instrument) in effect Upon the trusts and subject to the powers and provisions which, under the recited Settlement and Disentailing Assurance and this Deed, or by reason of the exercise of any power of charging contained in the recited Settlement (and not released) or this Deed, shall for the time being be subsisting or capable of taking effect with respect to land hereby settled:

Cesser of prior settlement.

(2) IF and when all the limitations, charges and powers of charging subsisting under the recited Settlement shall have determined or been discharged, the trustees for the time being hereof, for the purposes of the Settled Land Act, 1925 (if not the same persons as the former trustees of the compound Settlement), shall be declared to be the trustees for those purposes of the principal vesting instrument.(*p*)

No. 63.

Power for professional trustee to charge.(*q*)

ANY trustee (including a term trustee) being a solicitor or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business

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Leigh v. *L.* [1902], 1 Ch. 400; 71 L. J. Ch. 195. But after 1925 the legal estate in the advowson will be vested in the statutory owners.

(*o*) This Form is only used in a resettlement when, by reason of the existence of family charges under the old settlement, the latter cannot be determined. For the corresponding provision as to capital money, see Form No. 38, p. 285.

When a settlement ceases.

A settlement determines when the limitations and powers cease and there is no minority, or when the land becomes subject to a trust for sale: S. L. Act, 1925, s. 3, as amended by L. P. (Amend.) Act, 1926, Sch.

Changes of ownership.

(*p*) If, as is desirable, the same persons act as trustees of both settlements, then nothing need be done when the old settlement is spent, save that if it determines by reason of the death of a tenant for life then his special personal representatives will, if the land remains settled land, by a vesting assent, transfer the land to the next tenant for life after the charges immediately raisable are cleared. Again, if a tenant for life by forfeiture, &c., ceases to be a tenant for life then he must by a vesting instrument convey to the next tenant for life: *ib.*, s. 7.

Deed of discharge.

When a settlement (including a compound settlement) wholly ceases then a deed of discharge is required: *ib.*, s. 17; unless the land is vested in personal representatives.

(*q*) See notes to the similar Form in Settlements (Personal), p. 165, also transacted, time expended and acts done by him or any partner of his in connexion with the trusts hereof, and of any vesting instrument from time to time forming part of the Settlement, including acts which a trustee not being in any profession or business could have done personally.

No. 64.

Power to value and apportion.(*qq*)

In the execution of any of the trusts or powers hereof the Trustees may (without prejudice to any jurisdiction of the court) decide what money represents income and what represents capital, and may on the winding up of all or any of the trusts allot or apportion any money or investments [heirlooms or other chattels] the trusts whereof are hereby declared to or between the persons entitled thereto at the mesne market price of the day, or at a valuation, in such manner as the Trustees shall deem just and reasonable according to the respective rights and interests of the persons interested, and notwithstanding that funds held on different trusts have been blended, and for the purposes aforesaid may ascertain and fix the value of the respective parts of the said investments [and chattels], and every such decision, allotment, apportionment and valuation shall be as binding upon all persons then or thereafter to be interested in the premises as if the same had been duly made by a court of competent jurisdiction.

No. 65.

Protection of tenant for life and Trustees who act on expert advice.

WHERE a tenant for life, statutory owner, or a trustee, in the purported exercise of the trusts and powers hereby or by any statute conferred, acts on the advice of any counsel, solicitor, engineer, surveyor, land agent, actuary, cashier, accountant or other expert [of not less than —— years standing in his profession] the tenant for life, statutory owner or trustee (as the case may be) shall not be responsible for any loss which may

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T. Act, 1925, s. 23, as to powers to employ agents; and as to the power to make valuations: *ib.*, s. 22 (3).

Undivided shares; trust for sale. If the land becomes vested in possession in undivided shares a trust for sale is interposed: S. L. Act, 1925, s. 36. If the land is not already vested in the former S. L. Act trustees (*e.g.*, as the special personal representatives of a former tenant for life) they can require the estate owner to convey it to them or assent to its vesting in them on trust for sale.

Overreaching powers. The S. L. Act trustees so holding on trust for sale have the over-reaching powers of a tenant for life: *ib.*, s. 36 (2); see also L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3), as amended by L. P. (Amend.) Act, 1926, Sch.

Additional powers. These trustees and their successors in office also have any additional powers which were formerly conferred on the tenant for life by the former settlement: L. P. Act, 1925, s. 28 (1), as amended by L. P. (Amend.) Act, 1926, Sch.

(*qq*) This form will seldom be required, see T. Act, 1925, s. 15 (*b*) for power to sever and apportion blended trust funds or property; and for power to value: *ib.*, s. 22 (3).

result from acting on such advice, but the act or omission shall be deemed to be authorised and proper, and the advice shall operate to protect the tenant for life, statutory owner or the trustee in like manner as if the act or omission had been directed or authorised under an order of a court of competent jurisdiction.

No. 66.

General wide indemnity to tenant for life and trustees.(*r*)

In the professed execution of the trusts and powers hereof, or of any statutory power, neither a tenant for life, statutory owner, nor a trustee, shall be liable for any loss to any property from time to time subject to the limitations or trusts hereof arising by reason of any improper investment made in good faith, or for the negligence or fraud of any agent employed by any of them, although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by a tenant for life, statutory owner or by a trustee, or by reason of any other matter or thing except wilful and individual fraud or wrong doing on the part of the tenant for life, statutory owner or trustee who is sought to be made liable.

No. 67.

Covenant for further assurance of advowsons and rights of presentation.(*s*)

The said —— (*settlors*) hereby jointly and severally covenant with the Trustees that if, by reason of the provisions of the Benefices Act, 1898, or otherwise, it shall at any time hereafter be ascertained that the vesting instrument of even date herewith did not operate to pass any of the advowsons or rights of presentation to which the said —— (*settlors*) became entitled under the recited Settlement ——, or any [disposition or] subsidiary vesting deed [to the uses or] upon the trusts thereof, then the said —— (*settlors*) or the persons deriving title under them will, at the cost of the trust estate, execute all such supplemental vesting deeds by way of further assurance as may be necessary or proper for the purpose of effectually conveying any such advowsons or rights of presentation to the tenant for life [or statutory owners] Upon the trusts hereinbefore expressed to be declared concerning the same.

No. 68.

Appointment of Trustees for purposes of the S. L. Act, 1925.(*t*)

(1) The Trustees are hereby appointed to be the trustees hereof for the purposes of the Settled Land Act, 1925 [and so that it shall be obligatory on the Trustees during the minority

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(*r*) This Form should only be used in special cases.

(*s*) This Form is required where an advowson is settled and by reason of a recent admission of an incumbent to the benefice the advowson cannot be conveyed till the expiration of a year: Benefices Act, 1898, s. 1 (1) (c).

(*t*) The provision appointing S. L. Act trustees must be inserted in every realty settlement. Their powers will be exercisable by the survivor, and until new trustees are appointed by the representatives of a sole or last surviving of any tenant for life or tenant in tail by purchase (*u*) to enter on the land hereby settled and manage the same in accordance with the statutory powers and provisions]: (*v*)

[(2) PROVIDED that so long as the recited Settlement [the settlement created by the recited Will] remains subsisting the Trustees thereof for the purposes of the Settled Land Act, 1925, shall be the Trustees of the compound Settlement consisting of that settlement, the recited Disentailing Assurance and this Deed for those purposes.(*w*)]

Number of trustees. deceased trustee: *cf.* T. Act, 1925, ss. 18, 36 (7), 64 (1). This is clear as to trustees appointed by the court: S. L. Act, 1925, s. 34 (2). But there must be not less than two trustees to give receipts unless the trustee is a trust corporation. S. L. Act, 1925, s. 94 (1); T. Act, 1925, s. 14. The same rule applies as to notices: S. L. Act, 1925, s. 101. After 1925 the number of trustees cannot be increased to exceed four: T. Act, 1925, s. 34. For the meaning of "trust corporation": L. P. Act, 1925, s. 205 (1) (xxviii); L. P. (Amend.) Act, 1926, s. 3.

Receipts.

"Trust Corporation."

Minorities. The mere appointment of S. L. Act trustees is sufficient to give them, during a minority, the powers conferred by S. L. Act, 1925, s. 102, see that section. The other powers of a tenant for life are exercisable by the S. L. Act trustees during a minority: *ib.*, s. 26.

Powers during minorities. (*u*) This direction did not under the old law create any antecedent legal estate in the trustees but only a power of entry: *Re Earl Stamford and Warrington* (No. 1) [1912], 1 Ch. 343; 81 L. J. Ch. 302; it could not create a legal estate after 1925. For the powers referred to, see S. L. Act, 1925, s. 102.

Who should be appointed S. L. Act trustees. (*v*) It is obviously expedient in the case of a resettlement to appoint the S. L. Act trustees (if any) of the previous settlement to act as S. L. Act trustees of the new settlement; this avoids the need for sub-clause (2). Whether or not so appointed, the S. L. Act trustees of the previous settlement will be the trustees of the compound settlement so long as the previous settlement remains subsisting: S. L. Act, 1925, s. 31. As to the duration of the previous settlement: *ib.*, s. 3, as amended by L. P. (Amend.) Act, 1926, Sch. It is essential that if there is a compound settlement the S. L. Act trustees thereof should act: *ib.*, s. 1. The trustees of the prior instrument are the S. L. Act trustees of the compound settlement consisting of that and the subsequent instruments, unless the court has appointed trustees of the compound settlement: *ib.*, s. 31. But if there are no S. L. Act trustees of the prior instrument, then the trustees of the instrument, under which there is a tenant for life or statutory owner, will be the trustees of the compound settlement till new trustees are appointed of the prior instrument or of the compound settlement: L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, s. 31. As to who are S. L. Act trustees: S. L. Act, 1925, s. 30.

Absence of trustees of the prior instrument.

Continuance in office. Once persons have become S. L. Act trustees of an instrument, they and their successors in office remain trustees thereof so long as the settlement subsists: *ib.*, s. 33; thus, although a power of sale may have ceased, whether before 1926 or after 1925 (see the reference to the Acts of 1882 to 1890), if it constituted S. L. Act trustees, they and their successors will remain S. L. Act trustees. A settlement subsists so long as a family charge subsists or a power of charging can be exercised, if it is not determined by a trust for sale: *ib.*, s. 3 (as amended). The Act applies to settlements made before or after the 1st January, 1926: *ib.*, s. 119 (1) (a).

Old law. (*w*) Under the old law, trustees could not be appointed trustees of the

No. 69.

Power to appoint new trustees (in a Trust instrument).

THE said —— (*first tenant for life*), during his life, and after his death the person (if any) of full age for the time being entitled to the possession or the receipt of the rents and profits of the premises hereby settled, shall have power from time to time to appoint a new trustee or new trustees hereof [and of any term hereby limited].(*x*)

No. 70.

Marginal notes.

THE marginal notes shall not affect the construction of this deed.

No. 71.

Headings of schedules to Vesting instruments.

THE [FIRST] SCHEDULE.

Particulars of the Settlement [Resettlement] [Will] [Compound Settlement] under which the Tenant for Life is entitled in possession [and of the deaths of parties affecting the beneficial title].

THE [SECOND] SCHEDULE.

Particulars of Conveyances to the uses or upon the trusts of the Settlement [Resettlement] [Will] [Compound Settlement] [*or* of Subsidiary Vesting Deeds].

THE [THIRD] SCHEDULE.

Particulars of documents and facts relating to the devolution of the Trusteeship.

THE [FOURTH] SCHEDULE.

First Part.

Particulars of freehold lands and buildings.(*y*)

Freeholds (Vesting instrument).

No. on Plan.	Description of Property.	Tenant's Name.	Acreage.

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settlement and of a *previous* settlement for the purposes of the Acts: *Re Spencer's S. E.* [1903], 1 Ch. 75; 72 L. J. Ch. 59; except where a tenant for life in possession and tenant in tail were resettling estates unfettered by charges or powers of charging: *Re Spearman S. E.* [1906], 2 Ch. 502; 75 L. J. Ch. 829; this exceptional power to appoint S. L. Act trustees has been maintained by S. L. Act, 1926, s. 30 (1) (v).

Vesting instruments.

(*x*) In a vesting instrument the person who, at the date of the instrument, has power to appoint new trustees of the settlement will be named as the person having power to appoint new trustees. The trusts do not disclose the person entitled to the receipt of the rents and profits. Where there is a change of ownership a new vesting instrument will be executed if the land remains settled land.

(*y*) Any manor or advowsons will be described in the parcels or placed in a separate part of the schedule.

Second Part.

Perpetual rentcharges (Vesting instrument).

Particulars of perpetual yearly rentcharges [and tithe-rentcharges].

Amount of Rentcharge.	Date of Grant.	Property on which the Rentcharge is secured.

THE [FIFTH] SCHEDULE.

Enfranchised lands (Vesting instrument).

Particulars of enfranchised lands (affected by manorial incidents).

First Part.

Former description on the court rolls.(z)

Second Part.

Enfranchised lands. (Vesting instrument).

Modern description.

No. on Plan.	Description of Property.	Tenant's Name.	Acreage.

Incorporeal property.

As to the remedies for recovering a rentcharge (*e.g.*, a jointure) issuing out of another rentcharge: L. P. Act, 1925, s. 122.

Settlement by reference to descriptions in Vesting instruments.

The schedules relating to the land and incorporeal property will form part of the vesting instrument of even date and will not be repeated in the trust instrument. It will be sufficient in the trust instrument to refer to the land and rights described in the vesting instrument.

Production to steward.

(z) If the manorial incidents have been extinguished, then the land should be placed with the other freeholds in the freehold schedule. The vesting instrument (as it relates to the legal estate) will be the document to be produced to and endorsed by the steward within six months under L. P. Act, 1922, s. 129.

Extinguishment of manorial incidents.

Where the settlement involves an immediate change of ownership it will save fines and costs if a compensation agreement is entered into before the settlement is made.

Reference should be made after each set of parcels to the last admission, thus:—

"to which property —— was admitted on the —— day of ——."

THE [SIXTH] SCHEDULE.

Particulars of leasehold property.(*a*)

Leaseholds (Vesting instrument).

Date of Lease.	Parties to Lease.	Property demised.	Term.	Yearly Rent [*or* minimum Rent].

THE [SEVENTH] SCHEDULE.(*b*)

Particulars of incumbrances affecting the inheritance.

Incumbrances affecting the inheritance (Vesting instrument.)

1. £— Secured on the property in the —— part of the —— Schedule hereto by a Mortgage dated, &c., and now vested in —— under a Transfer dated ——, with interest at the rate of £— p. c. p. a.
2. £— Secured, &c.

As to settlement of mining leases or mines worked by tenant for life.

(*a*) If different classes of leaseholds are settled, *e.g.*, building leases and mining leases, the schedule should be divided into parts. If mines are to be worked by statutory owners during a minority with capital money, special powers and indemnities must be given.

Abolition of leases for lives and of perpetually renewable leases.

Leases for lives have been converted into terms of 90 years terminable by notice on either side after the dropping of the life: L. P. Act, 1925, s. 149 (6).

Perpetually renewable leases have been converted into terms of 2,000 years: L. P. Act, 1922, 15th Sch., as amended by L. P. (Amend.) Act, 1924.

Perpetually renewable copyholds have been enfranchised, the owner of the land takes a fee simple: L. P. Act, 1922, s. 135; but the owner of a perpetually renewable underlease derived out of a renewable copyhold interest takes a 2,000 years term.

Copyholds for life or for years without a right of perpetual renewal have been converted into leaseholds for years: L. P. Act, 1922, s. 133; L. P. Act, 1925, s. 149.

Mining leases as incumbrances.

(*b*) If there are any mining leases subject to which any part of the property is to be settled they may be placed in another part of the incumbrance schedule in the vesting deed. The same remark applies to building leases.

Family charges are not incumbrances for purposes of Vesting instruments.

Family charges are capable of being over-reached, as in every case the trustees of any compound settlement must act; accordingly they must not be mentioned as incumbrances in any vesting instrument.

Legal estate in settled land.

The legal estate (*e.g.*, the fee simple or head term) in settled land will be vested in the tenant for life or statutory owner; legal mortgagees will either have a legal charge or a long term derived out of the fee simple or a sub-term derived out of the head term which is settled.

Incumbrances affecting beneficial interests.

Mortgages affecting life interests and remainders must not be referred to in vesting instruments, but notice thereof must be given to the S. L. Act trustees: L. P. Act, 1925, s. 137.

Where the title to the settled land is registered, the tenant for life or statutory owner or personal representatives must be registered as proprietors: L. R. Act, 1925, s. 86. The register must be rectified if the land stands in the names of persons having a mere power of appointment, not being the

THE [EIGHTH] SCHEDULE.

Powers in excess of those conferred by the S. L. Act, 1925.(c)

References to additional or larger powers conferred by the Settlement [Resettlement] [Will] [Compound Settlement] in relation to the settled land.

No. 72.

Headings of Schedules to Trust instruments.

THE [FIRST] SCHEDULE.

Particulars of personal estate settled as capital money.

First Part.

Investments (Trust instrument).

Investments and money transferred to the Trustees.

Second Part.

Policies.

Policies of assurance on the life of —— assigned to the Trustees.

Date of Policy.	No. of Policy.	Office in which effected.	Annual Premium.	Amount secured exclusive of Bonuses.

THE [SECOND] SCHEDULE.

Heirlooms (Trust instrument).

Particulars of chattels hereby settled as heirlooms.

(*These may either be described or be merely referred to by reference to signed inventories.*)

THE [THIRD] SCHEDULE.(*d*)

Family charges (Trust instrument).

Particulars of family charges having priority to the trusts hereby declared.

Registered settled land.

estate owners: *ib.*, ss. 2, 69, 92. No fee is charged for rectifying the register under s. 92. A tenant for life or statutory owner has an inalienable right to be registered as proprietor: S. L. Act, 1925, s. 106. As to the restriction to be entered in the case of registered land: L. R. R., 1925, Sch., Form 9.

Land held on trust for sale.

When the land becomes subject to a trust for sale the trustees for sale must then be registered as proprietors: L. R. Act, 1925, s. 94; for the restriction then applicable: L. R. R., 1925, Sch., Form 10.

Additional powers.

(*c*) Powers relating to the application of capital money and powers to create family charges should not be mentioned in vesting instruments. But if the powers can be enlarged by the exercise of a general power of appointment this should be mentioned.

Powers under compound settlements.

A compound settlement consists of all the instruments creating it, it is not a separate entity; it is immaterial which of the documents confer the powers, all of the additional powers are exercisable by the tenant for life: *Re Cowley S. E.* (1926), W. N. 202.

Overreachable family charges.

(*d*) Though the family charges created before the date of a resettlement and not thereby released will have priority to the new trusts, this does not prevent them from being over-reached; but it may be convenient to place them in a schedule to the trust instrument for purposes of reference.

1. £— p. a.	Jointure rentcharge payable to —— during the residue of her life [affecting the properties numbered — in the —— Schedule to the Vesting Deed of even date] appointed to her by Deed dated —— under a power in a Settlement dated ——.
2. £—	Portions secured by an equitable term of —— years [affecting the properties numbered — in the —— Schedule to the Vesting Deed of even date] created by a Charge dated —— for the benefit of the —— younger children [and issue] of the late ——, with interest from the death of —— at the rate of £— p. c. p. a., and provisions for maintenance money and advancements.

THE [FOURTH] SCHEDULE.

Particulars of the property the life interest in which is hereby surrendered by the Father.

Property surrendered (Trust instrument).

PART II.

PRECEDENTS OF SETTLEMENTS (REAL).

No. I.

VESTING DEED *for giving effect to a* SETTLEMENT *subsisting at the* COMMENCEMENT *of the* S. L. ACT, 1925.(*a*)

Parties.

THIS VESTING DEED is made this (*date*), BETWEEN R. T., of, &c., and S. T., of, &c. [*the S. L. A. Trustees of the Settlement or of the Compound Settlement, if there is one* (*b*)] (hereinafter called the Trustees), of the one part, and T. L., of, &c.(*c*) (hereinafter called the Tenant for Life), of the other part: WHEREAS—

Title to freeholds.

(1) Under the Settlement [Compound Settlement] [Will] mentioned in the —— Schedule hereto, and by reason of the

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(*a*) For a short form, see S. L. Act, 1925, 1st Sch., Form No. 1.

(*b*) As to who are S. L. Act trustees: S. L. Act, 1925, ss. 30, 31 (as amended by L. P. (Amend.) Act, 1926, Sch.), 32 and 33. If there is a compound settlement the trustees thereof are the trustees to be made parties: *ib.*, s. 1 (1).

Need for vesting deed.

Death of tenant for life before deed executed.

(*c*) As to who are tenants for life or statutory owners: *ib.*, ss. 19 and 20; also L. P. (Amend.) Act, 1926, Sch., adding para. 4 to 1st Sch., Pt. IV, of the L. P. Act, 1925. So long as the land remains settled land, the tenant for life or statutory owner is unable to make a title to the legal estate till a vesting deed is executed: S. L. Act, 1925, s. 13. If the tenant for life dies before a vesting deed has been executed the legal estate will vest in his special personal representatives, and they can, when the family charges, &c., required to be paid off have been cleared, convey the land by a principal vesting deed to the next tenant for life, pursuant to S. L. Act, 1925, 2nd Sch., para. 2, for in this case para. 1 of this Sch. does not apply, save that the conveyance should be effected by deed (not by an assent) where a legal term remains to be converted into an equitable term under para. 1 (6) as amended. An absolute owner, subject to a family charge, can make a title to a legal estate subject thereto: L. P. (Amend.) Act, 1926, s. 1, but a vesting deed should be made in his favour to authorise him to overreach it on all occasions save where he is mortgaging the land to raise money for his private purposes. Land ceases to be settled land when it becomes subject to a trust for sale: L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, ss. 1 and 3.

"Binding trust for sale."

All immediate trusts for sale are now "binding" (that is capable of overreaching equitable interests created *before* the trust for sale) within *Re Leigh's S. E.*, 70 Sol. J. 758, for under L. P. Act, 1925, s. 2 (2), as amended, the subsequent approval of the trustees, or the appointment of a trust corporation is all that can be required. This approval is not required where the land becomes vested in the former S. L. Act trustees on trust for sale.

deaths mentioned in that Schedule [and of the cesser, release, or discharge of certain family charges and powers of charging] [and by virtue of divers dispositions to the uses or upon the trusts of the said Settlement] [Compound Settlement] [Will] the freehold properties hereinafter described stood limited [subject to the incumbrances (*i.e., legal mortgages or rentcharges*) mentioned in the —— Schedule hereto, but otherwise] free from incumbrances immediately before the commencement of the Settled Land Act, 1925, to uses under which the Tenant for Life was and still is tenant for life in possession :

Title to enfranchised lands and leaseholds.

(2) Under the said Settlement [Compound Settlement] [Will] [and by virtue of divers dispositions upon the trusts thereof] [and by reason of the documents and facts mentioned in the —— Schedule hereto] the enfranchised lands hereinafter described (formerly copyhold of the manors mentioned in the —— Schedule hereto) and the leasehold properties hereinafter described (not including leasehold properties of which the Tenant for Life was registered as proprietor) were at the date aforesaid vested in the Trustees [in certain trustees] UPON TRUSTS corresponding as nearly as might be to the uses or limitations subsisting or capable of taking effect with respect to the said freehold properties as the different tenures would permit :

S. L. Act trustees.

(3) As appears from the documents and facts mentioned in the —— Schedule hereto, the Trustees are the present trustees for the purposes of the Settled Land Act, 1925, of the said Settlement [Compound Settlement] [Will] :

Request to execute vesting deed.

(4) The Tenant for Life has requested the Trustees to execute such Vesting Deed as is hereinafter contained, which they have agreed to do in manner hereinafter appearing :

Operative parts.(*d*)

NOW, for giving effect to the requirements of the Settled Land Act, 1925, THIS DEED WITNESSETH as follows :—

1. THE Trustees, As Trustees, hereby declare that—

Vesting of lands.

First, All and singular the freehold properties (including incorporeal properties and rights), enfranchised lands and

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Separate tenants for life.

(*d*) A separate vesting deed is required for each tenant for life, unless the tenants for life are joint tenants or are treated (L. P. (Amend.) Act, 1926, Sch., adding para. 4 to 1st Sch., Pt. IV, of the L. P. Act, 1925) as joint tenants. For instance, if a father surrenders his life interest in part of the settled land to his son, the next tenant for life, so as to extinguish the first life interest (S. L. Act, 1925, s. 105) a separate vesting deed must be made in favour of the son.

Specific description.(*e*)

leasehold properties and rights respectively described in the ——, —— and —— Schedules hereto, including the properties and rights acquired under the Conveyances to uses and other assurances mentioned in the —— Schedule hereto :

General words.

And Secondly, All other (if any) the properties, interests and rights capable of being vested by this declaration which are now by any means subject to the limitations or trusts of the said Settlement [Resettlement] [Will] [Compound Settlement, or of any of the instruments creating that Settlement] :

[Exception.]

[Except such parts (if any) of the properties as may have been sold or given in exchange or otherwise absolutely disposed of] :

[Incumbrances not capable of being over-reached.]

Are vested in the Tenant for Life, as to the freehold properties and rights (including enfranchised lands) in fee simple [but as to enfranchised lands, subject to the manorial incidents and rights of the lords of the manors affecting the same], and as to the leasehold properties and rights for all the residue of the terms of years for which the same are respectively held [but as

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Vesting deeds relating to part of the settled land.

(*e*) With a view to making the vesting deed a root of title, it is expedient to have a specific description; if time does not permit of this being done before part of the settled land falls to be dealt with, a separate vesting deed can be made confined to the property in question: *Re Ogle* [1926], W. N. 227. If a specific description is given, an exception of the property disposed of will not usually be required.

Parcels by reference.

If it is decided to employ a general description by reference to the documents creating the settlement, the parcels will be on the following lines :—

FIRST, All and singular the freehold properties (including incorporeal properties and rights), enfranchised lands and leasehold properties and rights [described in the —— Schedules to the said Settlement [Resettlement]] [*or* devised or bequeathed in settlement by the said Will] :

SECONDLY, All and singular the freehold properties, enfranchised lands and leasehold properties and rights comprised in the conveyances and other assurances to the uses or upon the trusts of the said Settlement [Resettlement] [Will] [Compound Settlement] mentioned in the —— Schedule hereto :

AND THIRDLY, All other (if any) the (*continue the general words as in the text and add the exception. As a general rule the parcels in documents relating to equitable interests cannot be referred to : S. L. Act*, 1925, s. 5 (2)).

to such of the properties affected thereby, subject to the incumbrances mentioned in the —— Schedule hereto].

Trusts.

2. THE Tenant for Life shall stand possessed of the said properties and rights, Upon the trusts and subject to the powers and provisions upon and subject to which under the said Settlement [Resettlement] [Will] [Compound Settlement] or otherwise the same ought to be held from time to time.

Nomination of S. L. Act trustees.(*f*)

3. THE Trustees are the Trustees of the said Settlement [Resettlement] [Will] [Compound Settlement] [and also of the Resettlement mentioned in the —— Schedule hereto] for the purposes of the Settled Land Act, 1925.

Additional or larger powers relating to the settled land.(*g*)

4. THE said Settlement [Resettlement] [Will] [Compound Settlement] confers the additional or larger powers mentioned in the —— Schedule hereto in relation to the settled land, and by virtue of section one hundred and eight of the Settled Land Act, 1925, these powers operate and are exercisable as if conferred by that Act on a tenant for life [*or*, No additional or larger powers operating in extension of those conferred by the Settled Land Act, 1925, are given by the said Settlement [Resettlement] [Will] [Compound Settlement] in relation to the settled land].

Covenant for indemnity in regard to leaseholds.

5. THE Tenant for Life hereby covenants with the Trustees that the Tenant for Life will from time to time duly pay all rents becoming due or accruing during the lifetime of the Tenant for Life under the Leases or Underleases respectively affecting the leasehold properties hereinbefore referred to, and will, during his life, observe and perform all the covenants and conditions therein contained and thenceforth from the commencement of the said Act, during the residue of his life on the lessee's part to be observed and performed; And also will, from the date aforesaid,

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Trustees of compound settlements.

(*f*) If there is a compound settlement, the S. L. Act trustees thereof must be named: S. L. Act, 1925, s. 1 (1) proviso. There will seldom be a case where there are no S. L. Act trustees capable of acting: S. L. Act, 1925, ss. 30 to 33. The amendment of s. 31 in L. P. (Amend.) Act, 1926, Sch., authorising the S. L. Act trustees of the instrument under which there is a tenant for life to act for the purposes of a compound settlement, if there are no trustees of the prior instruments, is far-reaching.

Additional powers.

(*g*) Additional powers given by any of the instruments forming part of the compound settlement relating to the settled land should be referred to: *Re Cowley S. E.* [1926], W. N. 202. If, after the vesting instrument has been executed, a resettlement is made which confers additional powers, but does not involve an immediate change in the ownership of the settled land, a memorandum of the additional powers should be endorsed on the vesting instrument, pending the execution of a supplemental vesting deed to comply with S. L. Act, 1925, s. 18 (1) (a).

Endorsement of further powers given.

at all times save harmless and keep indemnified the Trustees and their respective estates and effects from and against all proceedings, costs, claims and demands on account of any omission to pay the said rents, or any of them, accruing during the lifetime of the Tenant for Life, or any breach occurring during such lifetime of any of the said covenants and conditions.

Power to appoint new trustees.(*h*)

6. THE power of appointing new trustees of the said Settlement [Resettlement] [Will] [Compound Settlement [and Resettlement] mentioned in the —— Schedule hereto] is vested in the Tenant for Life during his life [*or*, No express power of appointing or nominating new trustees is conferred, and accordingly the statutory power is applicable for the purpose of appointing new or additional trustees].

IN WITNESS, &c. [*Add Schedules as required, see Form No.* 71, *p.* 303.]

No. II.

OPINION *as to effect of* VESTING INSTRUMENT.(*i*)

Re the —— Settled Estates.

OPINION.

1. I have perused copies of—

Documents perused.

(1) A Settlement of (*date*) and Appointments of New Trustees thereof (*dates*):

(2) An Appointment and Charge of Jointure and Portions of (*date*):

(3) A Disentailing Assurance (freeholds and capital money) of (*date*):

(*h*) The express power to appoint trustees should not be set out in full. It is only requisite to show by whom trustees are to be appointed during the subsistence of the vesting deed; the deed will cease to be actively operative on the death of the tenant for life, for the land then vests in his special personal representative. The parcels therein may be referred to in subsequent vesting instruments: S. L. Act, 1925, s. 5 (2).

Opinion in place of certificate of title.

(*i*) The object of this is to enable a vesting instrument to be made a root of title in those cases where, under the proviso to s. 110 (2), a purchaser would otherwise be concerned to see that (1) the land was comprised in the settlement, (2) the person in whom it is expressed to be vested was the tenant for life or statutory owner, and (3) the persons stated to be the S. L. Act trustees were the properly constituted trustees of the settlement. The General Council of the Bar take exception to the opinion being given in the form of a certificate of title. A purchaser should be given an opportunity of inspecting the opinion before a sale. To avoid questions arising as to identity, the opinion should in most cases be supplemented by a statutory declaration as to identity where the vesting instrument contains a specific description. Counsel cannot do more than inspect the parcels and plans as if he were advising a purchaser.

Statutory declaration as to identity.

(4) The like (copyholds) of (*date*) :

(5) A Resettlement of (*date*) :

(6) A Mortgage (of portions term) of (*date*) :

(7) A Conveyance of (*date*) to the uses of the Settlement and Resettlement :

(8) A Surrender of (*date*) made on the discharge of the Portions Mortgage :

(9) Appointments and Deeds of Discharge of Trustees of the Settlement and Resettlement of the following dates (*give dates*) :

[(10) *Add particulars of any other documents perused, as the case requires.*]

2. I AM of opinion that according to the title shown by the above documents— Opinion on title.

(a) The Compound Settlement, consisting of the Settlement, the Jointure Deed, the two Disentailing Assurances, and the Resettlement (with the Conveyance to uses), was a subsisting Settlement on the 1st January, 1926 :

(b) T. L. was, on that date, tenant for life in possession within the meaning of the Settled Land Act, 1925, of the property subject to the Compound Settlement :

(c) X, of, &c., and Y., of, &c., were on that date the properly constituted Trustees of the Settlement, the Resettlement, and the Compound Settlement for the purposes of the said Act :

(d) T. L. has power during his life to appoint new Trustees of the Settlement [and Resettlement], and consequently of the Compound Settlement.

[3. I SETTLED the draft of the Vesting Deed, which has been executed and is dated (*date*), and a draft of a Statutory Declaration by Mr. —— (sworn on ——) relating to the identity of the property described in the Vesting Deed.] [Draft settled.]

No. IIIA.

VESTING DEED (*Marriage Settlement*) *by an* ABSOLUTE OWNER *of* FREEHOLDS, ENFRANCHISED LANDS *and* LEASEHOLDS (*not being registered land*), *the trusts being declared of this property and certain personal property* (*see Prec.* IIID) *by a* TRUST INSTRUMENT *of even date.*(j) (*Legal Estate.*)

THIS VESTING DEED is made, &c. (*date*), BETWEEN A. B., Parties.

(j) For the statutory form : S. L. Act, 1925, 1st Sch., Form No. 2 ; there must be two deeds, otherwise the settlement will not operate to transfer or Mode of settling of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c. (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., and J. K., of, &c. (hereinafter called the Trustees), of the 3rd part: Whereas—

(1) *Agreement for marriage. Form No.* 1, *p.* 246:

Seisin of freeholds.

(2) The Husband is now seised of the freehold properties mentioned in the —— Schedule hereto for an estate in fee simple in possession [subject to the incumbrances mentioned in the —— Schedule hereto so far as they affect the premises, but otherwise] free from incumbrances:

Seisin of enfranchised lands.

(3) The Husband is now seised of the enfranchised lands mentioned in the —— Schedule hereto for an estate in fee simple in possession, subject to the manorial incidents and rights of the lords of the manors affecting the same,(*k*) but otherwise free from incumbrances:

Title to leaseholds.

(4) The leasehold properties mentioned in the —— Schedule hereto are now vested in the Husband free from incumbrances for the residue of the respective terms for which the same are held:

Agreement for settlement.

(5) *Agreement for settlement. Form No.* 2, *p.* 246:

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH and it is hereby declared as follows:—

Declaration of trust.(*l*)

1. The Husband, as Settlor, hereby declares that (*Parcels of freeholds, enfranchised lands and leaseholds by reference to the Schedules—Form No.* 5, *p.* 247) are vested in the Husband (*continue declaration of trust by reference to the Trust Instrument of even date* (*see Prec.* IIId) *as in Form No.* 5, *p.* 247).

S. L. Act trustees.

2. The Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. The additional or larger powers set forth in the —— Schedule hereto are conferred by the said Trust Instrument in

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land *inter vivos.*

create a legal estate in the land: *ib.*, s. 4; the requirements of that section must be complied with. The object is to secure that all deeds relating to a legal estate shall be in a simple form and to keep the trusts off the title. There could be no objection to two or more vesting deeds, for each deed, with the trust instrument, would be complete in itself: *cf. Re Clayton* [1926], 1 Ch. 279.

Production to steward.

(*k*) If the manorial incidents have been extinguished the enfranchised lands should be treated as ordinary freeholds. The vesting deed must otherwise be produced to the steward for endorsement within six months: L. P. Act, 1922, s. 129.

Authorised dispositions

(*l*) If the settlor is not to be the first tenant for life he will convey the land to such tenant for life instead of declaring a trust, see Form No. 5a, p. 248.

relation to the settled land,(*m*) and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life.

New trustees.

4. THE power of appointing a new trustee or new trustees of the Settlement is vested in the Husband during his life.

IN WITNESS, &c. [*Add the requisite Schedules—Form No.* 71, *p.* 303.]

No. IIIB.

DECLARATION *and* APPLICATION *by a* SETTLOR *who takes the first life interest to register a* RESTRICTION *against his registered title when the land is settled by him.*(*n*)

H.M. Land Registry.
Land Registration Act, 1925.

District ——.
Title No[s]——.
Property [Properties] ——.

(*Date*) Pursuant to a Trust Deed of even date herewith, made between A. B., of, &c. (*the settlor and registered proprietor*), of the 1st part, C. D., Spinster, of the 2nd part, and E. F., of, &c., G. H., of, &c., and J. K., of, &c., of the 3rd part, I, the said A. B., hereby declare as follows :—

(a) The land is vested in me upon the trusts from time to time affecting it by virtue of the said Trust Deed.

(b) The said E. F., G. H., and J. K. are the trustees of the Settlement.

(c) The powers set out in the Schedule hereto relating to land are expressly conferred by the said Trust Deed in extension of those conferred by the Settled Land Act, 1925.

(d) I have power to appoint new trustees of the Settlement.

And I apply to the Registrar to enter the following restrictions against the title[s] above referred to :—

Restriction—

No disposition under which capital money arises is to be

(*m*) For additional powers relating to the settled land, see Form No. 52A, p. 295, *et seq.*

(*n*) See L. R. R., 1925, Sch., Forms Nos. 23, 75 and 9. The reference to dispositions authorised by the S. L. Act, 1925, includes dispositions authorised under additional or larger powers conferred by the settlement which operate under that Act: r. 58 (2). If there is a prohibition against dealing with the mansion house without the consent of the trustees or an order of the court, no reference need be made thereto if a purchaser (see Form No. 49A, p. 294) is not concerned therewith.

include those authorised under additional powers.

Mansion house.

registered unless the money is paid to E. F., of, &c., G. H., of, &c., and J. K., of, &c. (the Trustees of the Settlement, of which there must be two and not more than four individuals or a trust corporation (*o*)) or into court.

Except under an order of the Registrar no disposition is to be registered unless authorised by the Settled Land Act, 1925.

[*Add Schedule of additional powers.*]

(*To be signed by the Applicant or his solicitor, see r.* 235.)

No. IIIc.

TRANSFER (*in lieu of a vesting instrument*) to a TENANT FOR LIFE *where the* SETTLOR (*being a registered proprietor*) *does not take the first life interest.*(*p*)

H.M. Land Registry.
Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

Transfer.

(*Date*) Pursuant to a Trust Deed of even date herewith, made between A. B., of, &c. (*settlor and registered proprietor*), of the 1st part, C. B., of, &c. (*new tenant for life and transferee*), of the 2nd part, and E. F., of, &c., G. H., of, &c., and J. K., of, &c., of the 3rd part, I, the said A. B., As Settlor,(*q*) hereby transfer to the said C. B. the land comprised in the title above referred to.

And I, the said A. B., declare as follows :—

Declaration.

(a) The land is vested in the said C. B. upon the trusts from time to time affecting it by virtue of the said Trust Deed.

(b) The said E. F., G. H. and J. K. are the trustees of the Settlement.

(c) The powers set out in the Schedule hereto relating to the land are expressly conferred by the said Trust Deed in extension of those conferred by the Settled Land Act, 1925.

Variation of restriction on appointment of new trustees.

(d) The said C. B. (*or as the case may be*) has power to appoint new trustees of the Settlement.

Covenants for title, &c., in regard to registered land.

(*o*) When the trustees are changed, an application must be made to modify the restriction by changing the names of the trustees : L. R. R., 1925, r. 235, Sch., Form 77.

(*p*) L. R. R., 1925, r. 99, Sch., Form 21.

(*q*) As to the construction of the implied covenants for title, &c., in relation to registered land : L. R. Act, 1925, s. 38 (2) ; L. R. R., 1925, rr. 76 and 77.

And I apply for the entry of the following restrictions (*set out as in last Precedent*). Application for restrictions.

[*Add Schedule of additional powers and see notes to last Precedent.*]

Signed, sealed, &c. } (*To be signed by the Applicant.*)

No. IIId.

TRUST INSTRUMENT (*Marriage Settlement*) by ABSOLUTE OWNER *of* FREEHOLDS, LEASEHOLDS (*including registered land*), INVESTMENTS, POLICIES *and* HEIRLOOMS.(*r*) (*Equitable Interests.*)

THIS TRUST INSTRUMENT is made, &c. (*date*), BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., G. H., of, &c., and J. K., of, &c. (hereinafter called the Trustees), of the 3rd part, and divided for purposes of convenient reference into a Preliminary and five other Parts: WHEREAS— Parties.

PRELIMINARY PART.

Recitals Relating to the Property Settled and other Matters. Recitals.

(1) *Agreement for marriage—Form No.* 1, *p.* 246.

(2) BY a Deed (hereinafter called the Vesting Deed), bearing even date herewith, and made between the same parties and in the same order, certain freehold properties, enfranchised lands and leasehold properties, situated or arising in the Counties of —— and ——, were declared to be vested in the Husband Upon the trusts declared concerning the same by a Trust Deed of even date, therein referred to (meaning this Deed): Vesting deed.

(3) THE Husband is registered as proprietor under the Land Registration Act, 1925, with —— (*an absolute, a possessory good leasehold*) title of certain freehold and leasehold properties, Title to registered land.

(*r*) For form of trust instrument: S. L. Act, 1925, 1st Sch., Form No. 3. Being a marriage settlement, Fin. (1909-10) Act, 1910, s. 74, does not apply. The stamp will be 10*s*. as regards the land, and 5*s*. per £100 on the value of the personal estate (other than leaseholds), reversionary interests being taken as if they were interests in possession. The *ad valorem* stamp must be placed on the trust instrument, and not on the vesting instrument: S. L. Act, 1925, s. 4 (3) (e). No precedent of a realty settlement is set out in full, without reference to forms, as an experienced draftsman will in all cases be employed. Stamp.

Both the vesting deed and the trust instrument can be executed as escrows till the marriage is solemnised. Escrows.

under the heading[s] [District ——, Title Nos. ——, Properties ——] District ——, Title No. ——, Property ——, and has by a Declaration and Application of even date herewith (*see Prec.* IIIB), declared that the said registered land[s] were [was] vested in him, on the trusts from time to time affecting those lands [it] by the Trust Deed therein referred to (meaning this Deed), and applied to the registrar to enter the usual restrictions against the said title[s] applicable to settled land :

Declaration of trust and application for restriction.

Transfer of investments.

(4) WITH a view to the Settlement intended to be hereby made the Husband has caused to be transferred into the joint names of the Trustees the investments mentioned in the —— Schedule hereto, representing the sum of £—— sterling :

Title to policies and heirlooms.

(5) THE Husband is also entitled free from incumbrances to the policies on his own life mentioned in the —— Schedule hereto, and also to the chattels mentioned in the —— Schedule hereto :

Agreement for Settlement.

(6) *Agreement for Settlement—Form No.* 2, *p.* 246.

Operative part.

Commencement of operative part—Form No. 4, *p.* 247.

FIRST PART.

Settlement of lands.

Settlement of Lands.

1. *Commencement of trusts—Form No.* 5B, *p.* 248, *and Form No.* 7, *p.* 249 :

(1) *Rentcharge to Wife for pin-money—Form No.* 8, *p.* 250.

(2) *Term for up-keep of policies—Form No.* 10, *p.* 252.

(3) *Life interest to Husband—Form No.* 11, *p.* 252.

(4) *Jointure rentcharge to Wife—Form No.* 13, *p.* 254.

(5) *Term to the Trustees to secure portions for younger children—Form No.* 14, *p.* 255.

(6) *Estates in tail male and in tail to sons successively according to seniority, and in tail to daughters as tenants in common—Form No.* 15, *p.* 256; *or to issue as Husband and Wife or Husband alone appoints—Form No.* 16 *or No.* 16A, *p.* 257, *with remainder.*

(7) UPON TRUST for the Husband in fee simple or absolutely.

SECOND PART.

Trusts of terms, powers of charging, and provisions as to releasing charges and surrendering terms.

Trusts of Terms, Powers of Charging, and Provisions as to Releasing Charges and Surrendering Terms.

2. *Trusts of Policy Term—Form No.* 23 *or* 23A, *pp.* 267, 268.

3. *Trusts of Portions Term—Form No.* 22, *p.* 264.

4. *Power for Husband to jointure future Wife—Form No.* 27, *p.* 274.

5. *Power for Husband to charge portions on future marriage—Form No.* 28, *p.* 275.

6. *Power for a tenant for life to require capital money to be paid in exchange for policies—Form* 26A *or* 26B, *pp.* 272, 273.

7. *Power for females restrained from anticipation to release rentcharges—Form No.* 31, *p.* 280.(*s*)

8. *Power for Term Trustees to surrender terms—Form No.* 32, *p.* 281.(*s*)

THIRD PART.

Settlement of Investments, Policies and Heirlooms.

Settlement of investments, policies and heirlooms.

8. *Declaration of trusts of investments in —— Schedule—Form No.* 33, *p.* 282, *and Form No.* 36, *p.* 283.

9. *Assignment of policies in —— Schedule—Form No.* 35, *p.* 283, *and No.* 36, *p.* 283.

10. *Assignment of heirlooms in —— Schedule and trusts thereof—Form No.* 39, *p.* 285.

FOURTH PART.

Additional or Larger Powers.

Settled Land Act extension clauses.

11. *Terms to merge in reversion—Form No.* 41, *p.* 289.

12. *Obtaining renewals, if required—Form No.* 42, *p.* 290.

13. *Introductory clause relating to capital money—Form No.* 43, *p.* 290 :

    (1) *Interim investments—Form No.* 44, *p.* 290.

    (2) *Purchase not limited to England—Form No.* 45, *p.* 292.

    (3) *Improvements—Form No.* 46 *or* 47, *pp.* 292, 293.

    (4) (i) and (ii) *Mining royalties and subsidence—Form No.* 48, *p.* 293.

    (5) *Licensed property, if required—Form No.* 49, *p.* 294.

    (6) *Dealings with mansion house—Form No.* 49A, *p.* 294.

    (7) *Proof that tenant for life has given directions—Form No.* 50, *p.* 294.

    (8) *Notices dispensed with, if desired—Form No.* 51, *p.* 295.

(*s*) These powers are still useful to enable old family charges to be released and new ones substituted, for they reduce the number of documents creating the settlement. Still they are not so important as before 1926, for family charges (till money is raised by way of legal mortgage for satisfying them) can be over-reached, as in all cases the trustees of the compound settlement will be employed.

14. *Incorporation* (*t*) *of additional powers relating to the settled land by reference to the Vesting Deed of even date—Form No.* 51A, *p.* 295.

FIFTH PART.

Trustee clauses.

Provisions as to Trustees and Miscellaneous Provisions.

Powers of trustees, &c.

15. *Power to present to livings—Form No.* 61, *p.* 298.

16. *Power for professional trustee to charge—Form No.* 63, *p.* 299.

17. *To value and apportion—Form No.* 64, *p.* 300.

18. *Protection of tenant for life and Trustees who act on expert advice—Form No.* 65, *p.* 300.

19. *Wide indemnity to tenant for life and Trustees—Form No.* 66, *p.* 301, *if required.*

20. *Appointment of the Trustees for purposes of the Settled Land Act—Form No.* 68, *p.* 301.

21. *Power for Husband to appoint new Trustees—Form No.* 69, *p.* 303, *omitting references to subsequent tenants for life.*

22. *Marginal notes—Form No.* 70, *p.* 303.

IN WITNESS, &c.

SCHEDULES (*see Form No.* 72, *p.* 306).

PRELIMINARY NOTE TO RESETTLEMENTS.

Where vesting deed is not required.

Though S. L. Act, 1925, s. 4 (1), provides that a Settlement of a "legal estate," *inter vivos*, is to be effected by a vesting instrument and trust instrument, and if effected in any other way is not "to transfer or create a legal estate," this does *not* apply to a Resettlement, where—

(a) there is already a subsisting vesting instrument, and
(b) the existing estate owner is to retain the first life interest.

Estate owner bound to hold on the proper trusts.

The penalty (loss of the legal estate) is not applicable, for the proper estate owner already has it vested in him upon the trusts upon which the same ought "from time to time" to be held, see S. L. Act, 1925, 1st Sch., Forms Nos. 1 and 2; even if the original vesting instrument is defective in this respect the estate owner would, under *ib.*, s. 16, be bound to give effect to the equitable interests and powers "of which he has notice according to their respective priorities."

Not a disposition of the legal estate.

In such circumstances a resettlement is not a disposition of a legal estate, but operates to vary the equitable interests and powers, by way of family arrangement, behind the existing curtain. If trustees are the registered holders of stock, no transfer has to be executed by them when the equitable

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(*t*) This clause can only be used where the additional powers are set out in full in the Vesting Deed of even date. If only a few additional powers are given or it is contemplated that the Vesting Deed may have to be handed over to a purchaser, then Form No. 52, p. 295, should be used in place of Form No. 51A, and the additional powers should also be set out in full in the trust instrument. In most cases Form No. 58, p. 297, should be used.

interests in the investments are varied by a derivative settlement or sub-settlement. Again, if the title to the land is registered and the tenant for life is the registered proprietor subject to the prescribed restrictions, no transfer has to be executed by him when the land is re-settled.

Supplemental vesting deed.

An excuse may be made for the execution of a supplemental vesting deed, see Prec. XX, *infra*, where additional powers have been conferred since the date of the last principal vesting instrument, for bringing the story up to date, but the general rule is that, unless the life estate is surrendered, or additional land is brought into settlement, a new vesting instrument will not be required on a re-settlement *inter vivos.*

Vesting assent after death.

On the death of the estate owner, in whom the settled land is vested, a vesting assent will be made by his special representatives, if the land remains settled land; in this assent the facts material to the title to the legal estate will be mentioned.

No. IV.

TRUST INSTRUMENT (*Re-settlement on Marriage*) *of* LAND *by an* ABSOLUTE OWNER *where the land is subject to a* JOINTURE RENTCHARGE (*which is not released*) *limited by a* PRIOR SETTLEMENT *and a* SUBSTITUTED RENTCHARGE *is limited.*(u) (*Equitable Interests.*)

Parties.

Parties (as in last Precedent, No. IIID. *The Vesting Deed will be in the form of Prec. No.* I, *supra, for the Settlor would have been within S. L. Act,* 1925, *s.* 20, *on* 1*st January,* 1926. *The fact that the jointure is subsisting must not be mentioned in the Vesting Deed, for it is over-reachable. Care must be taken that the S. L. Act Trustees of the Compound Settlement are appointed as the trustees in the Trust Instrument. If there are no such trustees, then the S. L. Act Trustees of the new Settlement will become the trustees of the Compound Settlement till (if at all) other trustees are appointed in their place: L. P. (Amend.) Act,* 1926, *Schedule amending S. L. Act,* 1925, *s.* 31; *see also ss.* 30, 32 *and* 33 *of that Act).*

Settlement by owner in fee simple subject to a jointure rentcharge.

(*u*) It is assumed here that in the lifetime of the settlor's father (the tenant for life under the old settlement) the estate tail of the settlor was barred, and that he is entitled in fee simple subject to a jointure rentcharge limited under the old settlement. The jointress may be abroad and cannot release her rentcharge and accept a new one in its place, but a new one is limited to her so that she can subsequently release the old one.

Variation if the jointress releases her jointure, before a vesting deed is executed

An absolute owner subject to a family charge can make a title subject thereto without a vesting deed being made under S. L. Act, 1925, s. 13, see L. P. (Amend.) Act, 1926, s. 1. If no such vesting deed has been made and the jointress is willing to release her jointure, this release should be effected by a separate deed as it affects an equitable interest, then no vesting deed will be required under S. L. Act, 1925, s. 13, and the transaction will be carried out in the forms given in Precs. IIIA and IIID, save that in Prec. IIID the release of even date will be recited and a substituted rentcharge will be limited to the jointress.

PRELIMINARY PART.

Recitals.

Recitals relating to the Property Settled and other Matters.

(1) *Agreement for marriage—Form No.* 1, *p.* 246.

Title of Settlor under old Settlement and Disentailing Assurance.

(2) UNDER a Settlement (hereinafter called the Settlement of ——) dated, &c., and made, &c., and under a Disentailing Assurance (duly enrolled) dated, &c., and made, &c., and by reason of the death of the said X. B. (*Settlor's father*) on the —— day of —— and of the payment of all money raisable as portions for his younger children and the satisfaction of the term of —— years limited by the Settlement of —— for securing the same, the properties described in the Vesting Deed hereinafter recited were at the date thereof and still are vested in the Husband (who was born on the —— day of ——, as the eldest son of the said X. B.) in fee simple or absolutely subject to a yearly jointure rentcharge of £—— limited to the said Jane B. (*Settlor's mother*) (hereinafter called the Jointress) during her life in the event (which happened) of her surviving her husband, the said X. B., but otherwise free from incumbrances: And at the date aforesaid the Trustees were the trustees of the Settlement of —— for the purposes of the Settled Land Act, 1925:(*v*)

Vesting deed pursuant to S. L. Act, 1925, s. 13, and 2nd Sch.

(3) BY a Deed (hereinafter called the Vesting Deed) dated, &c., and made between the Trustees of the one part and the Husband of the other part, the Trustees declared that the properties therein described were vested in the Husband as to freehold properties in fee simple and as to leasehold properties for the residue of the terms of years for which the same were held, but as to enfranchised lands, subject to the manorial incidents and rights of the lords affecting the same, and as to all the premises on the trusts which under the Settlement of —— or otherwise the same ought to be held from time to time, and that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925, and that the statutory power to appoint new trustees was applicable:

Agreement for Settlement and operative part.

(4) *Agreement for Settlement—Form No.* 2, *p.* 246.

(5) *Commencement of operative part—Form No.* 4, *p.* 247.

Continuance in office.

(*v*) This would be so notwithstanding the disentailing assurance, and the death of the father, by virtue of S. L. Act, 1925, s. 33, see also s. 3. It is assumed that the father died before 1926, otherwise the settled land would have vested in his special personal representatives, and they would have executed a vesting assent in favour of the son if the jointure were still on foot.

First Part.

Settlement of Land.

Settlement of land.

1. *Commencement of trusts—Forms Nos.* 5B *and* 7, *pp.* 248–9.

Substituted rentcharge.

(1) Upon trust that the Jointress shall, in substitution for the yearly rentcharge of £—— limited to her by the Settlement of ——, receive during the residue of her life the yearly rentcharge of £——, to commence from the execution hereof and to be considered as accruing from day to day, but to be paid without any deduction, the first payment or proportionate payment (*w*) thereof to be made on the —— day of —— (*the day on which the old rentcharge is next payable*):

Provided that if the Jointress shall execute such release of the said yearly rentcharge limited to her by the Settlement of —— as the Trustees shall reasonably require and shall accept the rentcharge hereby limited to her in substitution therefor, the costs of and incidental to such release shall be paid out of the trust premises: And subject to the said rentcharge.

(2) *Rentcharge to Wife for pin-money—Form No.* 8, *p.* 250.

(3) *Life interest to Husband—Form No.* 11, *p.* 252.

(*Add other limitations, as in last Precedent, clause* 1, *sub-clauses* (4)—(7) *and Parts* II, III, IV *and* V *of last Precedent, as required, but the power to appoint new trustees will run as follows :—*

Power to appoint new trustees.

"(1) During the subsistence of the jointure rentcharge limited by the Settlement of —— the statutory power to appoint new trustees shall apply and the same persons shall be appointed to be

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Variation where new rentcharge exceeds old one.

(*w*) If the new rentcharge exceeds the old one, the old amount will be apportioned up to the date of the settlement and a proportionate part of the new one paid from the date of the settlement to the day on which the old one is next payable.

Jointress put to election.

Where the new rentcharge exceeds the old one the jointress should be put to her election, and the following proviso will be substituted for that in the text:—

"Provided that if the Jointress shall accept the yearly rentcharge hereby limited to her in substitution for the said rentcharge limited to her by the Settlement of ——, then she shall, within three months from the execution hereof or such longer period as the Trustees may allow, execute at the cost of the trust premises such release of the said rentcharge limited to her by the Settlement of ——, as the Trustees may reasonably require."

trustees hereof as are for the time being the trustees of that Settlement:

Endorsement of new power on Vesting Deed.

"(2) After the cesser of the said rentcharge the Husband shall have power during the residue of his life to appoint new trustees hereof and when this power becomes exercisable a memorandum to the effect that the Husband has power during the residue of his life to appoint new trustees of the Settlement shall be endorsed by the Trustees on the Vesting Deed."(x))

IN WITNESS, &c. [*Add Schedules, see Form No.* 72, *p.* 306.]

No. V.

TRUST INSTRUMENT (*Resettlement*) *by* FATHER (*who retains the first life interest*) *and* SON, *on the* MARRIAGE *of the* SON, *of* LAND *and* CAPITAL MONEY, &c.(y) (*Equitable Interests.*)

Parties.

THIS TRUST INSTRUMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Father), of the 1st part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, Jane D., of, &c., Spinster (*intended wife of son*) (hereinafter called the Wife), of the 3rd part, and X., of, &c., and Y., of, &c. (*Trustees of the old Settlement*) (hereinafter called the Trustees), of the 4th part, and divided for purposes of convenient reference into a Preliminary and five other Parts: WHEREAS:—

PRELIMINARY PART.

Recitals.

Recitals relating to the Property Settled and other Matters.

(1) *Agreement for marriage between the Son and the Wife—Form No.* 1, *p.* 246.

Endorsement of additional powers on Vesting Deed.

(x) Any additional powers conferred by the trust instrument which are not already mentioned in the vesting deed should be endorsed on the latter deed (pending the execution of a supplemental deed) and signed by the trustees, for these powers are exercisable by the tenant for life notwithstanding that the jointure may not have been released: *Re Cowley S.E.* (1926), W. N. 202.

Change in ownership of legal estate.

(y) If the son is to take the first life interest in any part of the land, the father surrendering his life interest in such land so as to merge it (S. L. Act, 1925, s. 105), then a new vesting deed must be made in regard to such land consequential on the change in ownership: *ib.*, s. 7.

As to the stamp, see note to Prec. IIID, p. 317. It is assumed here that no previous voluntary re-settlement has been made of the capital money and investments (see Form No. 37, p. 283), also that the father was tenant for life and the son tenant in tail under the old settlement; that the property has been disentailed and limited upon such trusts as they jointly appoint; also that the father's powers of charging (if any) were released by the disentailing assurance.

Settlement; title to freeholds on 1st January, 1926.

(2) Under a Settlement (hereinafter called the Settlement of ——) dated, &c., and made, &c., whereof the Trustees are the present Trustees, and by reason of the death of —— (*jointress*) on the —— day of ——, having had issue by the Father one child and no more (namely), the Son (*z*) who was born on the —— day of —— [and by virtue of divers dispositions to the uses or upon the trusts of the Settlement of ——], the freehold properties described in the Vesting Deed hereinafter mentioned were, at the commencement of the Settled Land Act, 1925, limited to the use of the Father during his life, With remainder To the use of the Son in tail male with divers remainders over and the Trustees were the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890:

Title to enfranchised lands.

(3) Under the Settlement of ——, and in the events aforesaid, the enfranchised lands described in the said Vesting Deed (formerly copyholds held of divers manors) were at the date aforesaid vested in the Trustees for a customary estate of inheritance UPON TRUST for the Father during his life, With remainder UPON TRUST for the Son in tail male(*a*) with divers remainders over, but subject to the manorial incidents and rights of the lords of the manors affecting the same:

Title to leaseholds.

(4) Under the Settlement of ——, and in the events aforesaid, the leasehold properties (including leaseholds for lives now converted into leaseholds for years terminable by notice) described in the said Vesting Deed were at the date aforesaid vested in the Trustees UPON TRUST for the Father during his life, with remainder IN TRUST for the Son absolutely or for a quasi estate in tail male:

[Vesting Deed pursuant to S. L. Act, 1925, s. 13.]

[(5) *Recite Vesting Deed (hereinafter called the Vesting Deed) in favour of the Father as in last Precedent.*]

Title to registered land.

(6) The Father is registered as proprietor with —— (*an absolute, a good leasehold, possessory*) title under the Land Registration Act, 1925, under the headings Districts ——, Title Nos. ——, Properties ——, of part of the lands comprised in the Settlement of ——, and has by a Declaration and Application of even date herewith in the prescribed form (*see Prec.* IIIB, *supra*) declared that he holds the same on the trusts of a trust deed of even date (meaning this deed) and has applied for a

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(*z*) This shows that no money was raisable for younger children.

Fee simple conditional.

(*a*) If there was no custom to entail in a manor a fee simple conditional is converted into an entailed interest if the fee has not become absolute: L. P. Act, 1922, 12th Sch., para. (8) (ii).

modification (*see L. R. R.*, 1925, *Sch.*, *Form* 77) of the restrictions against the said title numbers to comply with the restrictions (*see Prec.* IIIB, *supra*) now applicable to registered settled land :

Title to capital money [and heirlooms].

(7) Under the Settlement of —— and in the events aforesaid, the investments and capital money mentioned in the —— Schedule hereto standing in the names or under the control of the Trustees, were at the date of the Disentailing Assurance hereinafter mentioned held UPON TRUST for the Father during his life with remainder IN TRUST for the Son in tail male with divers remainders over [and the chattels mentioned in the —— Schedule hereto were at the date aforesaid held by the Trustees UPON TRUST for the Father during his life and after his death IN TRUST for the Son absolutely (*or otherwise as the case may be*)] :

Disentailing Assurance giving joint power of appointment.(*b*)

(8) By a Deed (hereinafter called the Disentailing Assurance) dated, &c., and made between the Son of the 1st part, the Father of the 2nd part and the Trustees of the 3rd part, the equitable interests of the Father and the Son in the lands, investments, capital money [chattels], and other properties or rights then by any means subject to the limitations of the Settlement of —— were conveyed and assigned to the Trustees (discharged from all entailed interests and otherwise as therein mentioned) Upon such trusts and for such purposes generally as the Father and the Son should by any deed jointly appoint and in default of and until and subject to any such appointment Upon the trusts therein mentioned :

Agreement for Settlement.

(9) *Agreement for Settlement—Form No.* 2, *p.* 246 :

Operative part.

Commencement of operative part—Form No. 4, *p.* 247.

FIRST PART.

Appointment and Settlement of Land.

Appointment of lands.

1. (*Appointment of freeholds, enfranchised lands and leaseholds —Forms Nos.* 6 *and* 7, *pp.* 248–9.)

Limitations.

2. (1) *Rent-charge to son during joint lives of himself and his father—Form No.* 9, *p.* 251. *Sometimes a rentcharge is also given to the son's widow during the joint lives of herself and her father-in-law.*(*c*)

Disentailing assurances, operate in equity.

(*b*) A disentailing assurance no longer has to be enrolled : L. P. Act, 1925, s. 133 ; it can only pass equitable interests : S. L. Act, 1925, ss. 13 and 18 ; no attempt should be made to transfer or create a legal estate by such an assurance.

(*c*) If the first limitation is upon such trusts as father and son may appoint, take Form No. 19, p. 260 ; and see note thereto.

(2) UPON TRUST for the Father during his life,(d) With remainder

(3) *Rentcharge to son's wife for pin-money—Form No.* 8, *p.* 250.

(4) UPON TRUST for the Son during his life, With remainder

(5) *Jointure rentcharge to son's wife—Form No.* 13, *p.* 254.

(6) *Term to the Trustees to commence after the death of the survivor of the father and son to secure portions for son's younger children—Form No.* 14, *p.* 255.

(7) *Estates in tail male and in tail to sons of the son, successively according to seniority, and in tail to daughters as tenants in common —Form No.* 15, *p.* 256.

(8) UPON TRUST for the Son in fee simple or absolutely.

SECOND PART.

Trusts of Portions Term, Powers of Charging and Provisions as to Surrendering Terms and Releasing Charges.

Trusts of Portions Term, powers of charging and provisions as to surrendering terms and releasing charges.

3. *Trusts of Portions Term—Form No.* 22, *p.* 264.

4. *Power for father to jointure future wife—Form No.* 27, *p.* 274.

5. *Power for father to charge portions on future marriage—Form No.* 28, *p.* 275.

6. *Power for son to jointure future wife—Form No.* 27, *p.* 274.

7. *Power for son to charge portions on future marriage—Form No.* 28, *p.* 275.

8. *Power for females restrained from anticipation to release rentcharges—Form No.* 31, *p.* 280.

9. *Power for Term Trustees to surrender terms—Form No.* 32, *p.* 281.

THIRD PART.

Appointment and Settlement of Investments [and Heirlooms].

Appointment and settlement of investments.

10. *Appointment of investments and money* (e) *in the* —— *Schedule and trusts thereof—Forms Nos.* 34, *p.* 282, *and* 36, *p.* 283.

(d) If the son is to take the first life interest in any part of the land, a new vesting deed will be required as this involves a change in the legal ownership. In such cases it may be convenient to have two trust instruments, but that in favour of the son can, by reference to the main trust instrument, incorporate the provisions which are to apply to the land taken by the son.

Separate transfers

(e) The capital money and investments must be separately transferred to the trustees if they are not the same persons as the trustees of the original settlement.

Registered land

If any registered land is re-settled a declaration and application for the modification of the registered restrictions will probably be required, see Prec. IIIB, *supra*: also L. R. R., 1925, Sch., Form 77.

[10A. *Appointment and settlement of heirlooms—Form No.* 39, *p.* 285.]

FOURTH PART.

Settled Land Act extension clauses.

Additional or Larger Powers.

11, 12 and 13. (*As in Prec.* IIID.)

Additional powers relating to the settled land endorsement.

14. *Introductory clause as to powers relating to the settled land—Form No.* 52, *p.* 295. (*A memorandum of such of the following additional powers as are not mentioned in the recited Vesting Deed should be endorsed thereon and signed by the Trustees to bring that Deed up to date pending the execution of a supplemental deed for not having been made on the occasion of the re-settlement it is probable that some of the powers will be new.*)

(1) *As to mansion house—Form No.* 52A, *p.* 295.

(2) *Price, &c., fixed by arbitration—Form No.* 52B, *p.* 296.

(3) *Exchanges not limited to England—Form No.* 53, *p.* 296.

(4) *As to building leases—Form No.* 54, *p.* 296.

(5) *Leases generally if required—Form No.* 55, *p.* 296.

(6) *Raising of money—Form No.* 56 *or* 57, *pp.* 296–7.

(7) *Transactions generally—Form No.* 58, *p.* 297. *This form should generally be used.*

(8) *Powers of attorney—Form No.* 59, *p.* 297.

(9) *Reference to joint power of appointment if any—Form No.* 60, *p.* 298.

FIFTH PART.

Trustee clauses.

Provisions as to Trustees and Miscellaneous Provisions.

15 to 20. (*As in Prec.* IIID, *supra.*)

21. *Power to appoint new trustees—Form No.* 69, *p.* 303.

22. *Marginal notes—Form No.* 70, *p.* 303.

IN WITNESS, &c.(*f*)

SCHEDULES (*see Form No.* 72, *p.* 306).

Indemnity on winding up trusts of the original settlement.

(*f*) When the trustees of the original settlement have transferred the investments to the new trustees, the father and son should give them a release and covenant to indemnify them in regard to any liabilities incurred or to any claims for death duties which may have attached. It generally saves costs to appoint the persons who are to act as trustees of the new settlement, to be trustees of the old settlement.

No. VIA.

TRUST INSTRUMENT (*Re-settlement*) *by* FATHER *and* SON (NOT *on* MARRIAGE,(*g*) *the* SON *taking the* FIRST LIFE *interest in part*) *of* LAND *and* CAPITAL MONEY, *where a* JOINTRESS *releases her* JOINTURE RENTCHARGE *and* TERM TRUSTEES *release a* PORTIONS TERM *and a* NEW JOINTURE *and* PORTIONS TERM *are limited.*(*h*) (*Equitable Interests.*)

Parties.

THIS TRUST INSTRUMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Father), of the first part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, Jane B., the wife of the said A. B. (hereinafter called the Jointress), of the third part, M., of, &c., and N., of, &c. (hereinafter called the Portion Trustees) (*Trustees of Portions Term under old Settlement*), of the 4th part, and S. T., of, &c., and W. T., of, &c. (hereinafter called the Trustees (*i*)), of the 5th part, and divided for the purpose of convenient reference into a Preliminary and five other Parts: WHEREAS:—

PRELIMINARY PART.

Recitals relating to the Property Settled and other Matters.

Settlement.

(1) Under a Settlement (hereinafter called the Settlement of ——) dated, &c., and made, &c. (whereof the Trustees are the present Trustees for the purposes of the Settled Land Act, 1925), and by reason of the birth of the Son on the —— (*date*)

Stamp.

(*g*) The stamp imposed by Fin. (1909-10) Act, 1910, s. 74, will be payable: this may involve a valuation of the land; hence, if practicable, the execution of the re-settlement should be postponed as regards the land, if of any considerable value, till the son intends to marry. In the meantime the capital money and investments can be re-settled (see Prec. VIII, p. 340, *infra*), a draft re-settlement of the land (Prec. IX, p. 346, *infra*), can be prepared and agreed, and an Agreement (Prec. X, p. 350, *infra*) entered into.

(*h*) In this case the jointress and term trustees are, it is assumed, able to get rid of the old family charges, which are released and relimited, and the old settlement becomes obsolete, except possibly as to claims for duties which may have attached but which can be provided for by the new settlement. In such a case a new vesting deed can, if desired, be executed by the father in regard to the land retained by him; there must be a new vesting deed in regard to the land taken by the son, see next precedent. Compare Prec. VII, where the old family charges cannot be cleared off.

Continuation of the same trustees.

(*i*) If practicable, the S. L. Act trustees of the new settlement should be the same as those of the old to avoid the necessity of transferring the investments and altering the names of the persons named in the usual restriction if the land is registered. This may save some stamp duty as regards the personal estate.

Title to freeholds.

(being the eldest son of the Father) [and by virtue of divers dispositions to the uses or upon the trusts of the Settlement of ——], the freehold properties described in the Vesting Deed first hereinafter mentioned were, immediately before the commencement of the Settled Land Act, 1925, limited TO THE USE of the Father during his life with remainder TO THE USE that the Jointress, if she survived him, should receive a yearly rentcharge of £—— during the residue of her life [without power of anticipation during any coverture], and subject thereto, TO THE USE of the Portion Trustees for a term of 1,000 years without impeachment of waste, on trusts for raising certain portions for the younger children of the Father and their issue, and subject thereto, TO THE USE of the Son in tail male with divers remainders over :

Title to enfranchised lands.

(2) Under the Settlement of ——, and in the events aforesaid, the enfranchised lands described in the said Vesting Deed (formerly copyholds held of divers manors) were, at the date aforesaid, vested in the Trustees for a customary estate of inheritance UPON TRUSTS corresponding to the uses affecting the said freehold properties :

Title to leaseholds.

(3) Under the Settlement of ——, and in the events aforesaid, the leasehold properties (including certain perpetually renewable leaseholds now converted into leaseholds for long terms) described in the said Vesting Deed were, at the date aforesaid, vested in the Trustees UPON TRUSTS corresponding as nearly as might be To the uses affecting the said freehold properties :

Power to [release jointure and] surrender portions term.

(4) The Settlement of —— contained an express power [for the Jointress notwithstanding the said restraint on anticipation, to release the said jointure rentcharge and also] for the Portion Trustees to surrender the said term of 1,000 years in manner and on the terms therein mentioned :

[Vesting Deed pursuant to S. L. Act, 1925, s. 13.]

[(5) *Recite Vesting Deed* (hereinafter called the First Vesting Deed) *in favour of the Father, as in Prec.* IV, *p.* 322 :]

Title to capital money.

(6) Under the Settlement of ——, and in the events aforesaid, the investments and capital money mentioned in the —— Schedule hereto, standing in the names or under the control of the Trustees, were, at the date of the Disentailing Assurance hereinafter recited, held UPON TRUST for investment in land to be settled on the limitations affecting the said freehold properties :

Disentailing assurance conferring

(7) By a Deed (hereinafter called the Disentailing Assurance) dated, &c., and made between the Son of the 1st part, the Father

of the 2nd part, and the Trustees of the 3rd part, the equitable interests of the Father and the Son in the lands, investments, capital money, properties and rights then by any means subject to the Settlement of ——, were conveyed and assigned to the Trustees (subject to the said jointure rentcharge, and the portions term of 1,000 years, but discharged from all entailed interests and otherwise as therein mentioned) Upon such trusts and for such purposes generally as the Father and Son should by any deed jointly appoint, and subject to any such appointment Upon the trusts therein mentioned:

joint power of appointment.

(8) *Agreement for Settlement—Form No. 3, p. 246:*

Agreement for release of old jointure and portions term.

(9) The Jointress and the Portion Trustees, being respectively satisfied with the yearly rentcharge and term hereinafter intended to be limited by way of substitution for the said rentcharge and term created by the Settlement of ——, have agreed to join herein for the purpose of releasing or surrendering the last-mentioned family charges:

Agreement to surrender life interest in part.

(10) The Father (as part of the terms of the intended Re-settlement (*j*)) has agreed to surrender his life interest in the freehold properties mentioned in the —— Schedule hereto, so as wholly to extinguish his life interest in those properties within the meaning of section one hundred and five of the Settled Land Act, 1925 (as amended), in manner hereinafter appearing, and to give legal effect to such surrender by means of the Vesting Deed next hereinafter mentioned:

Vesting deed in favour of the son.(*k*)

(11) By a Deed (hereinafter called the Second Vesting Deed), bearing even date with, but intended to be executed immediately after this Re-settlement, and made between the Father of the 1st part, the Son of the 2nd part, and the Trustees of the 3rd part, pursuant to section seven of the Settled Land Act, 1925, the Father conveyed the freehold properties therein described (being the properties mentioned in the —— Schedule hereto), to the Son in fee simple, to be held by him Upon the trusts declared concerning the same by a trust instrument (meaning this Re-settlement), bearing even date with, but executed before the second Vesting Deed, or upon such other trusts as the same ought to be

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(*j*) It saves estate duty if the father surrenders his life interest in part of the property and lives for three years, instead of limiting a rentcharge to the son during the joint lives.

Estate duty.

(*k*) See next Precedent. If all the old family charges are released this re-settlement becomes a new settlement in regard to the land taken by the son. If a new vesting deed is also to be executed by the father this should be recited and referred to as the "Third Vesting Deed."

held from time to time; And it was thereby declared that the Trustees were the trustees of the Settlement for the purposes of the said Act, that certain additional powers were exercisable and that the Father during his life and after his death, the Son, had power to appoint new trustees:

Commencement of operative part—Form No. 4, *p.* 247.

First Part.

Appointment and Settlement of Land and Release of Jointure and Portions Term limited by the Settlement of ——.

Appointment and release of land.

1. (1) In exercise of the power for this purpose conferred by the Disentailing Assurance and of all other powers, the Father and Son, As Settlors, hereby irrevocably appoint that

All and singular the lands and incorporeal properties comprised in the First Vesting Deed and all other (if any) the real estate and chattels real whatsoever which may be subject to the joint power of appointment conferred by the Disentailing Assurance shall henceforth [subject to the incumbrances mentioned in the —— Schedule to the First Vesting Deed] remain and be held, Upon the trusts hereinafter declared concerning the same.

Surrender of life interest in part.

(2) The Father, As Settlor, hereby surrenders unto the Son, All that the life interest of the Father in All and singular the freehold properties mentioned in the —— Schedule hereto:

To the intent that as regards those properties the said life interest shall be wholly extinguished and that the statutory and other powers in relation thereto shall cease to be exercisable by the Father.

Release of rentcharge and portions term.

2. In consideration of the substituted rentcharge and term hereinafter limited and at the request of the Father and Son, the Jointress [with the concurrence of the Father (her husband) (*l*)] hereby,(*m*) As Mortgagee, releases [and disposes of and the Father hereby releases and confirms], and the Portion Trustees, for the purpose of surrendering the said term of 1,000 years, hereby, As Trustees, surrender and assign unto the Trustees:

Parcels.

First, All and singular the properties and rights hereinbefore expressed to be appointed,

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(*l*) If the jointress was married before 1883 she can release her jointure with the concurrence of her husband under the Fines and Recoveries Act, 1833, but the deed need not be acknowledged: L. P. Act, 1925, s. 167.

(*m*) If there is a pin-money rentcharge subsisting under the old settlement, it should also, if practicable, be released and relimited in the same way.

AND SECONDLY, All the capital money, investments and other personal estate hereinafter expressed to be appointed,

AND all other (if any) the premises hereby settled or affected by the said rentcharge or term,

To the intent that the said jointure rentcharge shall cease and that the said term of 1,000 years shall merge and be extinguished.

Life interests to be without impeachment, &c.

3. THE properties and rights hereinbefore appointed shall be held, as to the freehold properties mentioned in the —— Schedule hereto, by the Son, and as to the remainder of the said properties and rights, by the Father, Upon the trusts, &c. (*continue Form No.* 7, *p.* 249).

Joint power of appointment to father and son subject to the relimited jointure and portions term.

(1) *Upon such trusts as father and son shall jointly appoint— Form No.* 19, *p.* 260, *adding the following proviso* (*see note to same Form*) :—

PROVIDED that the foregoing power (*n*) shall not be capable of being exercised so as to prejudice either the yearly rentcharge of £—— hereinafter limited to the Jointress or the term of 1,000 years hereinafter limited for raising portions for the younger children of the Father and the Jointress without the respective consents of the Jointress and of the trustees or trustee for the time being of the said term ; And in default of and until and subject to any such joint appointment :

Relimitation of jointure rentcharge.(*o*)

(2) As to the properties and rights hereinbefore appointed (other than and except the freehold properties mentioned in the —— Schedule hereto) *Jointure rentcharge to Jointress— Form No.* 13, *p.* 254, *with the words in square brackets, but not the provision in the note. This assumes that the property taken by the Son is not required as a security for the jointure and portions* :

Relimitation of portions term.(*o*)

(3) UPON TRUST for the Portion Trustees for a term of 1,000 years (in substitution for the like term limited to them by the Settlement of ——), to commence from the death of the Father, without impeachment of waste on the trusts hereinafter declared ; And subject thereto :

Life interest to son.

(4) AND as to the freehold properties mentioned in the —— Schedule hereto, UPON TRUST for the Son during his life, With

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(*n*) This power enables the father and son to vary the settlement on the son's marriage without prejudice to the substituted jointure and rentcharge and to give additional powers. It may also save stamp duty under Fin. (1909-10) Act, 1910, s. 74, except in so far as the son takes an immediate life interest.

(*o*) These limitations and the trusts of the term should follow the old jointure rentcharge and portions term so far as practicable.

remainder Upon the trusts hereinafter limited to take effect after the death of the survivor of the Father and Son:

Relimitation of life estate to father.

(5) AND as to the properties and rights hereinbefore appointed (other than and except the freehold properties mentioned in the —— Schedule hereto), UPON TRUST for the Father during his life, With remainder

Life estate to son.

(6) UPON TRUST for the Son during his life, With remainder, As to all the properties and rights hereinbefore appointed:

Estates tail to son's issue male, life estates to his brothers, &c.

(7) *Limitations to first and other sons of the Son in tail male and other limitations, taking the Father's younger sons and their issue according to seniority, as required (see Form No.* 17,(*p*) *p.* 258), *with ultimate remainder to the Son in fee simple or absolutely.*

Name and arms clause.

4. *Name and arms clause, if required—Form No.* 21, *p.* 261.

SECOND PART.

Trusts of Portions Term, Powers of Charging, and Provisions as to Surrendering Terms and Releasing Charges.

Trusts of portions term, powers of charging, and provisions as to surrendering terms and releasing charges.

5. *Trusts of Portions Term—Form No.* 22, *p.* 264, *but giving effect to the trusts of the old term.*

6. *Power for father,*(*q*) *after the death of Jane B., to charge jointures on remarriage and for son to charge jointures on marriage. Adapt Form No.* 27, *p.* 274.

7. *Power for father* (*r*) *and son in like events to charge portions. Adapt Form No.* 28, *p.* 275.

8. *Power, if required, for successive tenants for life (other than the father and son) to charge jointures—Form No.* 29, *p.* 277.

9. *Power, if required, for successive tenants for life (other than the father and son) to charge portions—Form No.* 30, *p.* 278.

10. *Power for females restrained from anticipation to release rentcharges—Form No.* 31, *p.* 280.

11. *Power to surrender terms—Form No.* 32, *p.* 281.

THIRD PART.

Appointment and Settlement of Investments.

Appointment of investments.

12. (1) *Appointment of investments in —— Schedule—Form No.* 34, *p.* 282, *ending with:* "Upon the trusts and subject

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(*p*) See also Form No. 18, p. 259, if the estate is to follow a peerage.

(*q*) These powers will generally be given to the father if he had them under the old settlement. It may be generally more convenient to give separate powers of charging to the father and son.

(*r*) See last note.

to the powers and provisions hereinafter declared concerning the same."

[Release from rentcharge and portions.(s)]

[(2) IN further pursuance of the said agreement the Jointress [with the concurrence of the Father (her husband)] hereby, As Mortgagee, releases [and disposes of and the Father hereby releases and confirms] and the Portion Trustees hereby, As Trustees, release and assign unto the Trustees,

ALL AND SINGULAR the investments and money hereinbefore expressed to be appointed,

TO HAVE AND RECEIVE the same unto the Trustees, discharged from the said jointure rentcharge of £—— limited by the Settlement of —— and from the trusts of the original term of 1,000 years thereby limited; And so released Upon the trusts and subject to the powers and provisions following (that is to say):—]

Trusts of capital money and investments.

(3) *Settlement of investments—Form No.* 36, *p.* 283, *saying* "from the land hereby settled, other than and except the freehold properties mentioned in the —— Schedule hereto."

FOURTH PART.

Additional or Larger Powers.

Settled Land Act extension clauses.

13 to 15. (*As in Clauses* 11 *to* 13 *of Prec.* IIID, *p.* 319.)

16. (*As in Clause* 14 *of Prec.* V, *p.* 328, *and see the note as to endorsing additional powers on the first Vesting Deed.*)

FIFTH PART.

Provisions as to Trustees and Miscellaneous Provisions.

Trustee clauses.

17 to 22. (*As in Clauses* 15 *to* 20 *of Prec.* IIID, *p.* 320).

New trustees.

23. THE Father during his life, and after his death the Son during the residue of his life, and after the death of the survivor of them, the person (if any) of full age (*continue Form No.* 69, *p.* 303).

24. *Marginal notes—Form No.* 70, *p.* 303.

IN WITNESS, &c. [*Add Schedules, see Form No.* 72, *p.* 306, *and insert a Schedule of the land taken by the Son.*]

(s) This release is not required if the release in clause 2 extends to capital money as well as the land.

No. VIb.

VESTING DEED *made on the* SURRENDER *by a* TENANT *for* LIFE *of his* LIFE INTEREST *in part of the* SETTLED LAND *to the* TENANT *for* LIFE *in* REMAINDER. (*Legal Estate.*)(*t*)

Parties.

THIS VESTING DEED is made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Father), of the 1st part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, and S. T., of, &c., and W. T., of, &c. (hereinafter called the Trustees), of the 3rd part, supplemental to a Vesting Deed (hereinafter called the Principal Deed) dated, &c., and made, &c., whereby the freehold properties mentioned in the First Schedule hereto (with other properties) were declared to be vested in the Father in fee simple Upon the trusts therein referred to, and whereby the Trustees were declared to be the Trustees of the Settlement for the purposes of the Settled Land Act, 1925: WHEREAS:—

Supplemental to former vesting deed.

Surrender of life interest.

(1) Since the date of the Principal Deed the Father has surrendered his life interest in the properties mentioned in the First Schedule hereto to the Son, so as to extinguish such life interest, and the Son has become entitled to have those properties vested in him on the trusts hereinafter referred to:

Request to convey.

(2) The Son has requested the Father to execute such conveyance as is hereinafter contained, which he has agreed to do in manner hereinafter appearing:

NOW, pursuant to section seven of the Settled Land Act, 1925,(*u*) THIS DEED WITNESSETH and it is hereby declared as follows:—

Conveyance.

1. THE Father, As Settlor, hereby conveys unto the Son:

ALL the freehold properties situated in the parishes of ——, in the county of ——, more particularly described in the First Schedule hereto and delineated on the plan hereto and thereon edged ——,

To HOLD unto the Son in fee simple [subject to the mortgages and perpetual rentcharges mentioned in the second part of the said Schedule] Upon the trusts hereinafter mentioned.

Declaration of trust.

2. THE Son shall stand possessed of the premises Upon the trusts and subject to the powers and provisions upon and subject

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(*t*) See S. L. Act, 1925, ss. 7, 8, 105 and 106. If desired a separate vesting deed can be executed by the father in regard to the land retained by him, declaring that it is vested in him on the trusts of the settlement of even date; for the family charges have been released.

(*u*) This is a disposition authorised by that Act within s. 18 (1) (a).

to which under a Trust Instrument bearing even date with but executed before this deed, and made between (*for parties see last Precedent*) or upon such other trusts as the same ought to be held from time to time.

S. L. Act trustees.

3. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

4. THE additional or larger powers set forth in the Second Schedule hereto are conferred by the said trust instrument in relation to the settled land and by virtue of the said Act operate and are exercisable as if conferred by that Act on a tenant for life.

New trustees.

5. THE power of appointing a new trustee or new trustees of the Settlement is vested in the Father during his life, and after his death in the Son (if he survives him) during the residue of his life.

Acknowledgment.

6. THE Father hereby acknowledges the right of the Son to production of the documents mentioned in the Third Schedule hereto and to delivery of copies thereof.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of the Freehold Properties hereby conveyed.

No. on Plan.	Description of Property.	Acreage.

THE SECOND SCHEDULE.

Additional powers conferred by the said Trust Instrument in relation to the settled land.

[*These powers should be set out in full, see S. L. Act*, 1925, *s.* 18 (1).]

THE THIRD SCHEDULE.

Documents relating to the legal estate in the land hereby conveyed and retained by the Father as also relating to other land belonging to him.

[*To contain particulars of these documents.*(*v*)]

Documents relating to the legal estate in settled land.

(*v*) Documents relating exclusively to the land conveyed to the son must be handed over to him : S. L. Act, 1925, s. 98 (3). He has a right to production of the trust instrument as he is a beneficiary thereunder, but a purchaser is not concerned therewith.

No. VII.

TRUST INSTRUMENT (*Re-settlement*) *by* FATHER *and* SON (NOT *on* MARRIAGE) *of* LAND *and* CAPITAL MONEY, *subject to a* JOINTURE RENTCHARGE *and* PORTIONS TERM, *which are not released.*(*w*) (*Equitable Interests.*)

Parties.

THIS TRUST INSTRUMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Father), of the 1st part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees (*x*)), of the 3rd part, and divided for the purpose of convenient reference into a Preliminary and five other Parts: WHEREAS:—

PRELIMINARY PART.

Recitals relating to the Property Settled.

(1) to (3) (*Recitals of Settlement, title to freeholds, enfranchised lands and leaseholds as in recitals* (1) *to* (3) *in Prec.* VIA, *save that* "the Jointress" *will be defined when reciting the Settlement. It is assumed that the portions term is vested in* "the Trustees." *It will have been converted into an equitable term by virtue of the vesting deed.*)

(4) (*Recite vesting deed in favour of the Father* "hereinafter called the Vesting Deed," *as in Prec.* IV, *p.* 321.)

(5) and (6) (*Recite title to capital money* (*y*) *and Disentailing Assurance as in recitals* (6) *and* (7) *in Prec.* VIA, *p.* 330.)

(7) *Agreement for Settlement—Form No.* 3, *p.* 246.

Commencement of operative part—Form No. 4, *p.* 247.

Exercise of powers; restoration of life interest.

(*w*) This is the converse case to that in Prec. VIA, see notes thereto as to the stamps. Here the new settlement is made subject to the family charges under the old settlement, but whether or not the original life interest of the father is kept on foot (S. L. Act, 1925, s. 22), he and his successors in title will be able to over-ride them. *Semble*, it is safer to restore the life interest in view of declaration as to the exercise of powers in *ib.*, s. 22 (2), though he would in any case be able to exercise the additional powers: *Re Cowley S. E.* (1926), W. N. 202. An instance of a case in which this Precedent is required is where a jointress under the old settlement is restrained from anticipation and has no power to release her rentcharge, *cf.* Form No. 31, p. 280. As the old settlement must remain, there is no object in surrendering the old portions term. The jointure and portions are relimited here by way of substitution, so as to enable the old ones to be released when the restraint comes off, *i.e.*, on the death of the husband of the jointress, and thus reduce the number of the documents which constitute the settlement.

(*x*) The trustees of the re-settlement must be the same persons as the trustees of the old settlement.

(*y*) In this case the old settlement remains on foot; hence the capital money must remain as capital money arising under it.

First Part.

Appointment and Settlement of Land.

Appointment of land subject to old jointure and portions term.

Life estates without impeachment for waste.

1. *Appointment of land referring to the* "Vesting Deed"—*Form No.* 6, *p.* 248, *saying* "shall (subject to the said yearly jointure rentcharge of £——, limited by the Settlement of —— to the Jointress, if she survives the Father, and to the trusts of the said term of 1,000 years thereby also limited for securing the said portions) henceforth remain and be held Upon the trusts, &c. (*continue Form No.* 7, *p.* 249).

Joint power of appointment to father and son subject to the substituted jointure and portions term.

(1) *Upon such trusts as father and son shall jointly appoint* (*z*)—*Form No.* 19, *p.* 260, *adding the following proviso* (*see note to same Form*) :—

"Provided that the foregoing power shall not be capable of being exercised so as to prejudice either the yearly rentcharge of £——, hereinafter limited to the Jointress by way of substitution, so far as may be, for the like rentcharge limited in her favour by the Settlement of —— or the term of 1,000 years hereinafter limited for raising portions for the younger children of the Father and the Jointress in substitution, so far as may be, for the like term limited by the Settlement of ——, without the respective consents of the Jointress and of the trustees or trustee for the time being of the term hereby limited, and in default of and subject to any such appointment":

Substituted jointure rentcharge.(*a*)

(2) *Substituted jointure rentcharge to the Jointress—Form No.* 13, *p.* 254, *restraining her from anticipation during coverture, and with the words in square brackets, and Form No.* 13A, *p.* 254.

Substituted portions term.(*a*)

(3) *Substituted Portions Term—Form No.* 14, *p.* 255, *with words in square brackets.*

Rentcharge to son.

(4) *Rentcharge to Son during joint lives of himself and Father—Form No.* 9, *p.* 251.

Restoration of life interest to father.

(5) *Re-limitation of Father's life interest under the old Settlement—Form No.* 12, *p.* 252 (*continue limitations to Son for life, &c., as in Prec.* VIA).

Second Part.

Other limitations, trusts of term, powers of charging, &c., as in Prec. VIA.

(*Trusts of Substituted Portions Term, Form No.* 22, *p.* 264, *powers of charging and powers to release rentcharges and surrender terms, as in Second Part of Prec.* VIA, *p.* 334).

(*z*) This power enables the father and son to vary the settlement, but the proviso makes any such re-settlement take effect subject to the substituted jointure and portions term. This power may also save stamp duty.

(*a*) These limitations do not take the place of the old family charges. The new charges should correspond with or give better terms than the old ones.

THIRD PART.

Appointment and Settlement of Capital Money.

Appointment and settlement of capital money.

12. *Appointment of investments and capital money in —— Schedule—Form No.* 34, *p.* 282, *omitting words in first set of square brackets, but using those in the second set and saying :*—TO BE HELD by the Trustees, subject to the jointure rentcharge of £——, limited in favour of the Jointress by the Settlement of —— and to the trusts of the original Portions Term of 1,000 years thereby limited, and so subject Upon, &c. (*add Form No.* 36, *p.* 283).

13. *Capital money to be paid to Trustees of Re-settlement on termination of old settlement—Form No.* 38, *p.* 285.

Continue as in Prec. VIA, *to the end, but add in Part* V *provision as to land acquired being made subject to compound Settlement—Form No.* 62, *p.* 299.

IN WITNESS, &c.

(*For schedules, see Form No.* 72, *p.* 306.)

No. VIII.

RE-SETTLEMENT *of* CAPITAL MONEY, INVESTMENTS *and* EQUITY *of* REDEMPTION *in* POLICIES, *the* RE-SETTLEMENT *of the land being* POSTPONED *to avoid* STAMP DUTIES.(*b*) (*Equitable Interests.*)

Parties.

THIS RE-SETTLEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called "the Father"), of the 1st part, C. B., of, &c. (hereinafter called "the Son"), of the 2nd part, the Father and the Son (hereinafter collectively called "the Appointors"), of the 3rd part, and X. T., of, &c., Y. T., of, &c., and Z. T., of, &c. (hereinafter called "the Trustees"), of the 4th part, and divided for convenience of reference into a Preliminary and —— other parts : WHEREAS :—

(*b*) See Chap. III, Sect. II, p. 76, *supra*, for "Scheme for avoiding stamp duties," and p. 99, *supra*, for note on stamp duties on Voluntary Settlements, Prec. IX, p. 346, and Prec. X, p. 350, will be used in connexion with this Precedent. The three Precedents together effect the scheme suggested in that chapter.

PRELIMINARY PART.

Will, Vesting Deed and Disentailing Assurance shewing that the father is tenant for life of the land.

(1) Under the Will dated, &c., and proved with a Codicil thereto on, &c., of W. B. (who died, &c.), and by virtue of divers dispositions to the uses or upon the trusts of the said Will and by virtue of divers appointments and changes among the trustees thereof and by virtue of a Vesting Deed dated, &c. (made in favour of the Father for giving effect to the requirements of the Settled Land Act, 1925), and by virtue of a Deed (hereinafter called the Disentailing Assurance) dated, &c., and made, &c., certain properties in the County of —— are now vested in the Father Upon such trusts and in such manner generally as the Appointors shall by any deed revocable or irrevocable jointly appoint And subject to any such joint appointment Upon such trusts and in such manner as the survivor of the Appointors shall by any deed revocable or irrevocable or by Will or Codicil (for the purpose only of limiting the said properties upon trusts to devolve as nearly as may be on the same trusts as may from time to time be subsisting or capable of taking effect with respect to the investments and money hereinafter mentioned) from time to time appoint and in default of and until and subject to any such appointment UPON TRUST for the Father during his life without impeachment for waste, in restoration of his life interest under the said Will, with remainder UPON TRUST for the Son in tail male, or as regards leaseholds absolutely, with divers remainders over as respects freeholds And the Trustees are the present trustees of the said Will for the purposes of the Settled Land Act, 1925:

Appointors have a general power to appoint the mortgage debts, investments and money in the First Schedule.

(2) Under the said Will and Disentailing Assurance the mortgage debts mentioned in the first part of the First Schedule hereto and the investments and money mentioned in the second part of that Schedule are now standing in the names or under the control of the Trustees and are now held Upon such trusts and in such manner generally as the Appointors shall from time to time by any deed revocable or irrevocable jointly appoint and subject to any such joint appointment UPON TRUSTS under which the same are liable to be laid out in the purchase of freehold land to be settled upon the same trusts as the trusts which under the said Will and Disentailing Assurance shall for the time being be subsisting or capable of taking effect with respect to the freehold properties hereinbefore mentioned and so as (in the case only of the said investments and money) to

restore the powers for the Father under the said Will to appoint a yearly jointure rentcharge not exceeding £—— in favour of any Wife who may survive him and to charge portions for his younger children to the extent of £—— as in the said Will mentioned:

Mortgage debts in first part of First Schedule are secured on life interest of father and on policies in Second Schedule.

(3) The mortgage debts mentioned in the first part of the First Schedule hereto were created by the Father and affect part of his life interest under the said Will and are also secured by the policies on his life mentioned in the Second Schedule hereto:

Intention to release mortgage debts but to keep alive the charge on the life estate.

(4) It is intended that the mortgage debts mentioned in the first part of the First Schedule hereto shall be released, but that the said charge on the life interest of the Father in the lands subject to the limitations of the said Will, shall remain on foot for securing payment of the premiums in respect of the policies mentioned in the Second Schedule hereto:

Agreement to make settlement.

(5) The Appointors have agreed to execute such settlement as is hereinafter contained:

Operative part.

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH and it is hereby agreed as follows:—

First Part.

Appointments, Releases and Assignments.

Direction to release mortgage debts in first part of First Schedule and consequential releases.

1. (1) The Appointors, in exercise of the power for this purpose conferred on them by the Disentailing Assurance and of all other powers, hereby irrevocably appoint that the Trustees shall stand possessed of the mortgage debts mentioned in the first part of the First Schedule hereto and all interest (if any) due and to become due in respect of the same Upon trust to release the same to the Father in manner hereinafter appearing:

Saving of charge for upkeep of policies.

(2) Provided that the foregoing appointment shall not prejudice or affect the charge on the life interest of the Father under the said Will in the lands thereby settled for keeping up the policies mentioned in the Second Schedule hereto:

Release of mortgage debts.

(3) For giving effect to the foregoing appointment the Trustees as Mortgagees and by the direction of the Appointors hereby assign and release unto the Father:

All those principal sums of, &c., mentioned in the first part of the First Schedule hereto secured as therein mentioned together with all interest (if any) due or to become due thereon, To have and receive the same Unto the Father absolutely,

To the intent that the said mortgage debts may be merged and extinguished, but without prejudice to the charge on the life interest of the Father in the lands subject to the limitations of the said Will for the purpose of keeping up the policies aforesaid.

Appointment of the investments and money in the second part of the First Schedule discharged from powers to create family charge under the Will.

2. The Appointors, in exercise of the powers for this purpose conferred on them by the Disentailing Assurance and of all other powers, and As Settlors hereby irrevocably appoint that the Trustees shall stand possessed of the investments and money mentioned in the second part of the First Schedule hereto and all other (if any) the investments, money and personal estate (other than chattels real) now subject to the joint power of appointment conferred by the Disentailing Assurance discharged from the powers conferred on the Father by the said Will to appoint a yearly jointure rentcharge to a wife who survives him and to charge portions for his younger children and so discharged Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

Assignment of right of redemption in policies in Second Schedule.

3. The Father, As Settlor, hereby assigns and confirms unto the Trustees:

All that the right of redemption of the Father in the policies on his life mentioned in the Second Schedule hereto and the principal money thereby assured and all bonuses and other money to become payable thereunder with the full benefit thereof,

To have and receive the premises unto the Trustees absolutely Upon trust that the Trustees shall, as soon as may be after the death of the Father, get in and receive the money to become payable under the said policies and stand possessed of the net residue thereof (after discharging all costs and expenses incurred in recovering and receiving the same) Upon the trusts and subject to the powers and provisions hereinafter mentioned.

Further assurance of life interest in land.

4. (1) For the purpose of confirming the title of the Trustees to the life interest of the Father in the lands, subject to the limitations or trusts of the said Will, the Father, As Settlor, hereby assigns and confirms unto the Trustees,

All and singular the real estate and chattels real (except advowsons) which are now by any means subject to the limitations of the said Will as varied by the Disentailing Assurance or otherwise,

To have and receive the same Unto the Trustees during the life of the Father without impeachment for waste Upon the trusts and subject to the powers and provisions hereinafter declared concerning the term of one hundred years hereinafter directed to be limited and in aid of the provisions hereinafter contained for the upkeep of the policies mentioned in the Second Schedule hereto and of any policy which may be substituted therefor and any policy which may hereafter be assigned by the Father to the Trustees under the provisions hereof And subject as aforesaid IN TRUST for the Father absolutely,

Provision for release of life interest when other property is brought into settlement.

(2) PROVIDED that if the real and personal property for the time being, subject to the trusts of the said Will, shall at any time hereafter be settled upon the trusts upon which the land hereinafter directed to be purchased is directed to be settled, then, and in any such case, the Trustees shall (at the cost of the premises hereby settled) assign, release and surrender the life interest of the Father which may be vested in them on the trusts aforesaid to him to the intent that those trusts may thenceforth take effect exclusively under the trusts of the term of one hundred years hereinafter directed to be limited.

Preservation of powers.

(3) THE assignment hereinbefore contained of the said life interest in the said real estate and chattels real and any previous assignment contained in any mortgage or transfer of mortgage is subject and without prejudice to all powers of disposition capable of being exercised by the Father as tenant for life under the said Will and whether, under the Settled Land Act, 1925, or under the said Will as extended by any appointment made or to be made in exercise of the powers of the Disentailing Assurance or otherwise howsoever, and so that the exercise of any or every such power shall take effect in like manner as if the interest of the Trustees so acquired as aforesaid had been limited by the said Will and no consent shall be required by the Trustees or the persons deriving title under them to the exercise of the said powers, nor shall it be necessary to give to the persons acquiring any interest under the said powers for money or money's worth any notice of this deed or of any such mortgage or transfer of mortgage by reason of the assignments therein respectively contained, but the interest of the Trustees so acquired as aforesaid and of the persons deriving title under them shall be automatically transferred to the capital money and investments representing the same or the income thereof arising under the said powers in accordance with section one hundred and five of the said Act.

SECOND PART.

Declaration of Trusts making the Personal Property liable to be Settled as Land.

Declaration of trust of the money and investments in the second part of the First Schedule and of the policy money and definition of "the Trust Fund."

5. THE Trustees shall stand possessed of the investments and money mentioned in the second part of the First Schedule hereto and other premises hereinbefore appointed and of the net money from time to time received under the policies of assurance hereinbefore expressed to be assigned or under any policies which may be substituted therefor UPON TRUST (until the same shall be invested in the purchase of land as hereinafter provided) either to permit the said investments to remain as at present invested or with such consent as may be required under the Settled Land Act, 1925, with respect to the investment of capital money to call in and convert the same into money and to invest the net money thereby arising (after payment of costs) and also the net money to be received under any of the said policies and the money mentioned in the second part of the First Schedule hereto in any of the investments hereinafter authorised with respect to capital money arising hereunder with power with the like consent or at the discretion of the Trustees to vary the said investments for others of a like nature, And the Trustees shall stand possessed of the said investments and of the investments for the time being representing the same (hereinafter called the Trust Fund) and the income thereof, Upon the trusts hereinafter mentioned.

Trust to lay out the Trust Fund in the purchase of land in England or Wales and settle the same.

6. (1) THE Trustees shall stand possessed of the Trust Fund, UPON TRUST to call in and convert the same into money and invest the net proceeds in the purchase or acquisition of real estate in England or Wales to be settled by means of the requisite instruments, Upon the trusts hereinafter mentioned, but with power for the Trustees with the like consent or at the like discretion as aforesaid (without being liable to account for the exercise of such discretion) to postpone the purchase or acquisition of any such real estate, but so that the Trust Fund shall, as from the date hereof, be deemed to be primarily liable to be laid out in the purchase of land in fee simple to be settled upon the trusts hereinafter mentioned and until so laid out the Trust Fund shall be held and applied in like manner as if the same were capital money arising under the Settled Land Act, 1925 (as hereby extended), from land so purchased or investments representing the same and the income thereof shall be paid or applied

as if the same were rents and profits arising from the land so purchased.

(2) (*Add subclause* (3) *of Form No.* 37, *p.* 284.)

(3) (*Add subclause* (4) *of the same Form and see the directions at the end of that Form. Among the powers add Form No.* 26A, *p.* 272. *For the arrangement of the different parts of the Deed, see Prec.* VIA, *p.* 329, *Parts* II, IV *and* V.)

IN WITNESS, &c. (*Add Schedules.*)

No. IX.

TRUST INSTRUMENT (*Re-settlement*) *of* LAND (*on marriage*) UPON TRUSTS *upon which* LAND *to be purchased with* CAPITAL MONEY *previously settled* (*c*) *is directed to be conveyed.* (*Equitable Interests.*)

Parties.

THIS TRUST INSTRUMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called "the Father"), of the 1st part, C. B., of, &c. (hereinafter called "the Husband"), of the 2nd part, the Father and the Husband (hereinafter collectively referred to as "the Appointors"), of the 3rd part, Jane D., of, &c., Spinster (hereinafter called "the Wife"), of the 4th part, and X. T., of, &c., Y. T., of, &c., and Z. T., of, &c. (hereinafter called "the Trustees"), of the 5th part: WHEREAS:—

Intended marriage.

(1) A marriage has been agreed upon and is intended to be solemnised between the Husband and Wife:

Of Will, Vesting Deed and Disentailing Assurance giving power to appoint land.

(2) Under the Will dated, &c., and proved with a Codicil thereto on, &c., of W. B. (who died on, &c.) and by virtue of divers dispositions to the Uses or Upon the trusts of the said Will and by virtue of divers appointments and changes among the trustees thereof and by virtue of the Principal Vesting Deed (made in favour of the Father) and the Subsidiary Vesting Deeds (relating to the acquisition of land after the date of the Principal Vesting Deed) mentioned in the —— Schedule hereto (hereinafter collectively referred to as the Scheduled Vesting Deeds) and by virtue of a Deed (hereinafter called the Disentailing Assurance) dated, &c., the freehold and leasehold properties described in

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(*c*) See last Precedent and note thereto. The draft of the re-settlement of land will be prepared at the same time as the re-settlement of the capital money, the name of the intended wife being left in blank. The re-settlement of the land will be postponed till the son marries, or if he does not marry it will be effected either by the Will of the Father or the Son (see next Precedent).

the Scheduled Vesting Deeds (so far as the same have not been sold or absolutely disposed of) are now vested in the Father, Upon such trusts and in such manner generally as the Appointors shall by any deeds revocable or irrevocable jointly appoint with certain limitations over in default of appointment under which the Father is tenant for life in possession and the Trustees are [by virtue of the power of sale contained in the said Will] the present trustees thereof for the purposes of the Settled Land Act, 1925:

The Re-settlement of the capital money, &c.

(3) This Deed is supplemental to a Re-settlement (hereinafter called the Money Re-settlement) dated, &c., and made, &c., whereby certain money and investments and the money to be received from certain policies were directed to be laid out by the Trustees in the purchase of land to be settled UPON TRUSTS creating a term of one hundred years and certain rentcharges (including a rentcharge limited to the Husband during the joint lives of himself and the Father, which will be increased on his marriage) and subject thereto UPON TRUSTS under which the Father is tenant for life in possession: And by the Money Re-settlement the Trustees were appointed to be the trustees thereof for the purposes of the Settled Land Act, 1925: And the Money Re-settlement contained a power for the Husband upon his marriage to direct that a sum not exceeding £—— should be raised and paid to him for his own benefit: And a power to appoint a yearly rentcharge to any Wife who might survive him and a yearly rentcharge to his first or other son living at the death of the Husband during the residue of the life of the Father and also a power to charge portions for his younger children and their issue as therein mentioned: And the Money Re-settlement contained a provision that if the lands for the time being subject to the trusts of the said Will should at any time thereafter be appointed or settled Upon the trusts upon which the land thereby directed to be purchased was directed to be settled then that the Trustees should assign, release and surrender the life interest of the Father in the said lands which was thereby or otherwise assigned to the Trustees upon trusts for keeping up the policies therein referred to and so that those trusts should thenceforth take effect exclusively under the trusts of the term of one hundred years thereby directed to be limited on trusts for life purposes:

Agreement to make settlement.

(4) In consideration of the said intended marriage it was agreed that such settlement should be made as is hereinafter contained

for the purpose of enabling the Husband to exercise the said powers of creating family charges on the lands hereinafter appointed or on parts thereof as well as on the premises comprised in the Money Re-settlement under the powers conferred by that Deed.

Operative part.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH and it is hereby declared as follows :—

Surrender by Trustees of life interest previously mortgaged for keeping up policies settled.

1. For giving effect to the direction for that purpose contained in the Money Re-settlement, the Trustees, As Trustees, hereby assign, surrender and release unto the Father :

All that the life interest of the Father in :

First, All and singular the freehold and leasehold properties,

And Secondly, All and singular the capital money and investments hereinafter appointed,

To have and receive the same unto the Father, discharged (as from the solemnisation of the said intended marriage) from the trusts declared by the Money Re-settlement for the upkeep of the policies therein referred to and To the intent that the properties and rights which will, by virtue of this Deed, be held on the trusts of the term of one hundred years directed to be limited by the Money Re-settlement shall, under the trusts of that term, become liable for the upkeep of the said policies.

Appointment of lands.

2. The Appointors, with the privity of the Wife, and in exercise of the power for this purpose conferred on them by the Disentailing Assurance and all other powers hereby, As Settlors, appoint that: All and singular the freehold and leasehold lands, properties and rights comprised in the Scheduled Vesting Deeds or any of them, and remaining unsold, and all other (if any) the real estate and chattels real, now by any means subject to the joint power of appointment conferred by the Disentailing Assurance, shall from and after the solemnisation of the said intended marriage remain and be held :

Upon the trusts and subject to the powers and provisions which under the Money Re-settlement are now subsisting or capable of taking effect with respect to any lands purchased under the provisions of that Deed, or which would be subsisting or capable of taking effect with respect to land if the same had been purchased under the provisions of the Money Re-settlement, but not so as to increase or multiply charges or powers of charging, save that the premises hereinbefore appointed shall (except as regards advowsons) be subject to all powers of charging conferred by the Money Re-settlement in like manner in all respects as if those premises had been purchased with capital money held on the trusts of or arising under that Deed and had been conveyed and settled Upon the trusts directed with respect to land purchased under the directions of that Deed.

Appointment of any remaining capital money.(d)

3. THE Appointors, with the privity of the Wife, and in exercise of the powers for this purpose conferred by the Disentailing Assurance and of all other powers, hereby, As Settlors, appoint that:

ALL AND SINGULAR the money and investments mentioned in the —— Schedule hereto and all other, if any, the money and investments which or the produce of which is or are liable to be laid out in the purchase of land to be conveyed and settled Upon the trusts of the said Will as varied by the Disentailing Assurance and any appointment thereunder (other than and except the money and investments which before the date hereof had been made subject to the trusts of the Money Re-settlement) shall from and after the solemnisation of the said intended marriage be held by the Trustees Upon the trusts and subject to the powers and provisions upon and subject to which capital money held on the trusts of the Money Re-settlement or arising under the Settled Land Act, 1925, from the lands thereby directed to be purchased and settled or investments representing the same would be held.

Appointment of S. L. Act trustees.

4. (1) The trustees or trustee for the time being of the Money Re-settlement for the purposes of the Settled Land Act, 1925, shall also be the trustees or trustee hereof for those purposes:

(2) (*Add power to appoint new trustees corresponding to that in the Money Re-settlement.*)

Settlement to be void if marriage not solemnised.

5. PROVIDED that if the said intended marriage shall not be solemnised within six months from the date hereof then and in such case the provisions hereof and the assignment, releases and appointments hereinbefore contained shall be wholly void.

IN WITNESS, &c. (*Add Schedules of the Vesting Deeds and of any capital money and investments remaining to be settled.*)

(*d*) So far as possible the capital money will be appointed from time to time to be held on the trusts of the Money Re-settlement as the stamp may, it seems, be less on a voluntary settlement than on a settlement on marriage, because the money is already vested in the Trustees.

No. X.

AGREEMENT *for re-settling* LAND *in certain events.*(e) (*Equitable Interests.*)

Parties.

AN AGREEMENT made, &c., BETWEEN A. B., of, &c. (hereinafter called the Father), of the 1st part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, and X. T., of, &c., Y. T., of, &c., and Z. T., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Re-settlement of capital money.

(1) This Agreement is supplemental to a Re-settlement (hereinafter called the Money Re-settlement), dated, &c., and made, &c., being a settlement of certain money investments and policy money directed to be laid out in the purchase of land for an estate in fee simple to be settled upon trusts under which the Father is tenant for life in possession and whereof the Trustees are the present trustees for the purposes of the Settled Land Act, 1925:

Draft Re-settlement of land.

(2) A draft (hereinafter called the Draft Re-settlement) has already been prepared (and for purposes of identification has been initialled by the Father and Son) for assuring in exercise of the power for that purpose conferred by the Disentailing Assurance mentioned in the Money Re-settlement the land and capital money (if any) subject to the trusts of the Will dated, &c., of the late W. B. UPON TRUSTS corresponding to the trusts upon which the land acquired under the direction for that purpose contained in the Money Re-settlement ought to be conveyed and settled:

Agreement to re-settle land in certain events.

(3) Upon the execution of the Money Re-settlement it was agreed that the Father and Son (hereinafter called the Appointors) should enter into such arrangement for re-settling the lands and property comprised in the Draft Re-settlement or otherwise for the time being subject to the trusts of the said Will in manner hereinafter appearing:

Agreement.

NOW IT IS HEREBY AGREED as follows:—

To settle on marriage of son.

1. (1) IF the Son shall marry during the lifetime of the Father then the Appointors shall immediately before such marriage and in consideration thereof execute and deliver the Draft Re-settlement (with such variations only as the deaths of parties and

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Contracts for settlement of land.

(e) A contract for a settlement of land does not affect a purchaser unless a land charge is registered to protect it: S. L. Act, 1925, s. 11; in the present case the contract is not intended to affect a purchaser and no land charge should be registered.

other circumstances may render necessary) for the purpose of appointing and settling the lands and other property for the time being subject to the trusts of the said Will upon the trusts of the Money Re-settlement in manner (as nearly as may be) provided by the Draft Re-settlement.

To settle further capital money.

(2) IF any capital money shall in the meantime, and before the marriage of the Son, arise from the lands subject to the limitations of the said Will, then the Appointors shall forthwith from time to time appoint the same to be held upon the trusts of the Money Re-settlement in like manner as if the Son had married.

Son, if survivor, to appoint on his marriage.

2. IF the Son survives the Father and marries after the death of the Father, then and in such case the Son shall, by deed made in consideration of such marriage, forthwith, in exercise of the power for this purpose reserved to him by the said Disentailing Assurance and of all other powers, appoint that all the lands and other property then subject to the trusts of the said Will shall remain and be Upon the trusts intended to be appointed or created by the Draft Re-settlement, and so that the same shall become subject to the limitations of the Money Re-settlement.

Father if survivor to appoint by deed or Will.

3. IF the Father survives the Son and no such Settlement shall have been made by them under their joint power conferred by the Disentailing Assurance aforesaid, then and in such case the Father will, either by deed, in consideration of any subsequent marriage by him or by his last Will or a Codicil thereto, exercise the power of appointment for this purpose reserved to him by the said Disentailing Assurance and appoint that the said lands and other property shall remain and be UPON TRUSTS as nearly as may be corresponding to those intended to be appointed or created by the Draft Re-settlement, or such of the same as would, if the Draft Re-settlement had been executed, have been subsisting or capable of taking effect.

Son if survivor to appoint by Will if he does not marry.

4. IF the Son survives the Father without having made such settlement as aforesaid, and if he shall not marry or make such settlement in his lifetime as hereinbefore provided, then and in such case the Son shall by his last Will or by a Codicil thereto, in exercise of the power for this purpose conferred on him by the said Disentailing Assurance and of all other powers, or in virtue of his estate, appoint or settle the lands and other property for the time being subject to the trusts of the said Will UPON TRUSTS corresponding as nearly as may be to the trusts intended to be limited or created by the Draft Re-settlement or such of the

same as would, if the Draft Re-settlement had been executed, have been subsisting or capable of taking effect.

Not to do anything to prevent a re-settlement, but not to constitute a settlement in equity or the consideration therefor.

5. In the meantime, until such Re-settlement shall have been made (whether by deed or Will as aforesaid), the Father and Son shall deal with the lands and other property for the time being subject to the trusts of the said Will in like manner in all respects as if such Re-settlement had been made, and will not do or suffer any act or thing which would prevent them, or the survivor of them, from exercising the said powers to the full extent in manner hereinbefore agreed, but nothing herein contained shall operate as an exercise of the said powers, or as a settlement in equity of any property or as constituting the consideration for any such Re-settlement as aforesaid.

Saving of purchasers.

6. Provided that no purchaser, mortgagee, lessee or other person dealing with the Father or with the Son under the powers conferred by the Settled Land Act, 1925, or any Act amending the same (as extended by any appointment made or to be made under the powers conferred by the said Disentailing Assurance) shall be concerned to see or inquire whether the provisions of this agreement have been complied with, and this agreement shall not in any way be deemed to be a document of title respecting the said lands or property, nor shall it be necessary to produce the same or give notice of the contents thereof to any such purchaser, mortgagee, lessee or other person as aforesaid or to refer to the same in any such Re-settlement as aforesaid or to register a land charge in respect thereof.

As witness the hands of the parties hereto.(*f*)

No. XIa.

VESTING DEED *for settling additional land on the trusts of a* Re-settlement *subject to* Mortgages. (*Legal Estate.*)(*g*)

Parties.

THIS VESTING DEED is made, &c., Between F. B., of, &c.

(*f*) The agreement must not be under seal, otherwise it might operate as an appointment under the powers. It is in the nature of a private undertaking of which notice is given to the trustees. It must be considered in each case whether the position of the parties justifies the risk of the undertaking not being properly carried out. To avoid any question as to whether the agreement would prevent the marriage being the true consideration for the re-settlement it is expressly provided that the agreement shall not constitute the consideration.

Stamp.

(*g*) This is the form of the second vesting deed recited in the next Precedent. The *ad valorem* stamp duty will be placed on the trust instrument of even date.

(hereinafter called the Father), of the 1st part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, and D. G., of, &c., and C. W., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Seisin subject to mortgages.

(1) The Father is seised in fee simple in possession of the properties mentioned in the First Schedule hereto, subject to the Mortgages mentioned in the Second Schedule hereto, but otherwise free from incumbrances:

Agreement to settle.

(2) The Father has, at the request of the Son, agreed by way of family arrangement to execute such Vesting Deed as is hereinafter contained:

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

Declaration of trust.

1. THE Father, As Settlor, hereby declares that:

ALL, &c. (*parcels by reference to First Schedule*), are vested in the Father in fee simple (subject to the Mortgages mentioned in the Second Schedule hereto), Upon the trusts declared concerning the same by a Trust Instrument bearing even date and executed contemporaneously herewith and made between (*parties as in next Precedent*) or upon such other trusts as the same ought to be held from time to time.

S. L. Act trustees.

2. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. THE additional or larger powers mentioned in the Third Schedule hereto are conferred by the said Trust Instrument in relation to the settled land and by virtue of the said Act operate and are exercisable as if conferred by that Act on a tenant for life.

New trustees.

4. THE power of appointing a new Trustee or new Trustees of the Settlement is vested in the Father during his life.(*h*)

IN WITNESS, &c. [*Add three Schedules.*]

Nomination of person to appoint trustees.

Where son takes first life interest.

(*h*) It is only necessary to show who will have power to appoint trustees until the time arrives for the execution of a new vesting instrument. Thus on the death of the father the settled land will vest in his special representatives and they will, if the land remains settled land, execute a vesting assent. If by the vesting deed the land had been conveyed to the son as the tenant for life and the father and son were by the trust instrument given powers successively during their lives to appoint trustees, then this fact should be mentioned, for a new vesting instrument would not be required in the ordinary course till the death of the son. As to the application of capital money in discharging incumbrances affecting land brought into settlement after the date thereof: S. L. Act, 1925, s. 91.

No. XIB.

TRUST INSTRUMENT (*Re-settlement*) *by* FATHER *and* ELDEST SON *of Settled Estates and other* ADDITIONAL REAL ESTATE, *subject as to the Settled Estates to Pin-money, Jointure and Portions.* LIMITATION *of* ADVOWSONS *as the Father and Son shall appoint, and as to the* OTHER LAND *for a* TERM *to* RAISE MONEY *to pay* INCUMBRANCES *affecting the* LIFE INTEREST. *Limitations of* RENTCHARGES *for the* SON; *of a* TERM *during Life of Father for paying* INTEREST *on* INCUMBRANCES, *affecting the* INHERITANCE *and the* LIFE INTEREST, PREMIUMS *on* LIFE POLICIES *and* FIRE INSURANCE; *and as to all,* UPON TRUSTS *in* STRICT SETTLEMENT, *a Jointress concurring and receiving a Larger Jointure.* POWER *for Son to* APPOINT *certain* ADVOWSONS *Upon Special Trusts; and to* CHARGE *a* SUM *for his own benefit.* POWERS *to* JOINTURE *and* CHARGE PORTIONS. APPOINTMENT *of* TRUSTEES. SETTLEMENT *of* POLICIES *subject to* INCUMBRANCES.(*i*) (*Equitable Interests.*)

Parties. THIS TRUST INSTRUMENT is made, &c., BETWEEN F. B., of, &c. (hereinafter called the Father), of the 1st part, C. B., of, &c. (hereinafter called the Son), of the 2nd part, Jane B., the wife of the said F. B., of the 3rd part, D. G., of, &c., and C. W., of, &c. (hereinafter together called the Trustees), of the 4th part, the said D. G. (hereinafter called the Life Estate Trustee), of the 5th part, and the said C. W., of, &c. (hereinafter called the Policy Trustee), of the 6th part, and divided for the purpose of convenient reference into a Preliminary and six other Parts: WHEREAS:—

PRELIMINARY PART.

Recitals relating to the Property Settled and other Matters.

Of settlement of P. & N. Estates (subject to mortgages) (1) At the date of the Disentailing Assurance hereinafter recited, under a Settlement (hereinafter called the Settlement of ——), dated, &c., and made, &c., and by virtue of a Deed

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(*i*) This is rather a complicated Precedent, but covers certain points which arise in practice; it shows how settled estates may be dealt with on a re-settlement where the old life estate is incumbered. If desired the personal estate can be dealt with by a deed of even date referring to the re-settlement. And see S. L. Act, 1925, s. 91, as to different incumbered estates settled on the same limitations.

Advowsons. Where an advowson is settled, any deed altering the ownership must be registered pursuant to the Benefices Act, 1898, within one month, but this Enfranchised lands. will generally be the vesting deed. Similarly in the case of enfranchised lands (hereinafter called the First Vesting Deed) dated, &c., and made, &c. (made in favour of the Father), the real estate and chattels real known as the P. and N. Estates, in the Counties of ——, &c., more particularly described in the First Schedule to the First Vesting Deed were vested in the Father (subject to mortgages for securing a total sum of £—— affecting the fee simple of parts of the said estates as mentioned in the —— Schedule to the First Vesting Deed), UPON TRUST (except as to advowsons) for securing payment to the said Jane B. during the joint lives of herself and the Father of the yearly sum of £—— by way of pin-money, without power of anticipation, and subject thereto, UPON TRUST (as to all the said estates) for the Father during his life, without impeachment of waste, with remainder, UPON TRUST (except as to advowsons) for securing payment of a yearly jointure rentcharge of £—— to the said Jane B. if she survived the Father during the residue of her life, and subject thereto, UPON TRUST for the Trustees for a term of 1,000 years, without impeachment of waste, UPON TRUSTS (in the events which have happened) for raising the sum of £—— after the death of the Father as portions for his younger children by the said Jane B., with certain interest and maintenance money, and subject to the said term, UPON TRUST for the Son (who was born (*date*)) in tail male, with divers remainders over: And the Settlement of —— contained a power for the Father if he re-married to appoint and charge a jointure rentcharge to an after-taken wife and portions for the younger children of a subsequent marriage and their issue as therein mentioned:

on trust for the father for life, subject to pin-money jointure and portions.

(2) At the date aforesaid the said life interest of the Father was (with the policies of assurance hereinafter mentioned and assigned) subject to the mortgages mentioned in the —— Schedule hereto:

Mortgages on life interest and policies.

(3) By a Deed (hereinafter called the Disentailing Assurance) dated, &c., and made between the Father of the 1st part, the Son of the 2nd part, and the Trustees of the 3rd part, the Son (with the consent of the Father as protector) conveyed, and the Father conveyed and released their respective equitable interests in the said estates unto the Trustees in fee simple or absolutely (subject to the mortgages mentioned in the —— Schedule to

Disentailing assurance.

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it will be the vesting instrument which must be produced to the steward under L. P. Act, 1922, s. 129. The penalty for non-production is that the legal estate does not pass.

the First Vesting Deed) and subject (exclusively and in exoneration of the money and investments thereinafter mentioned and assigned, being certain cash and investments of small amount which were liable to be laid out in the purchase of lands to be settled on the subsisting limitations of the Settlement of ——) to the said pin-money and jointure rentcharge charged in favour of the said Jane B., and to the sum raisable for portions for the younger children of the Father by the said Jane B., and to the portion term aforesaid, but freed from the life estate of the father under the Settlement of —— and all powers of charging and other powers annexed to or exercisable during the continuance of such life estate, And also freed from the estate in tail male of the Son, and all other estates in tail male or in tail of the Son or the Father, and all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates in tail male or in tail or any of them, Upon such trusts and in such manner generally as the Father and Son should from time to time by deed revocable or irrevocable jointly appoint, And in default of and until and subject to any such appointment, Upon the trusts and subject to the powers and provisions which, immediately before the execution of the Disentailing Assurance, were subsisting with reference to the premises thereby conveyed:

Second vesting deed of further land.

(4) By a Deed (*see last Precedent*) (hereinafter called the Second Vesting Deed) bearing even date and intended to be executed contemporaneously herewith and made between the Father of the 1st part, the Son of the 2nd part, and the Trustees of the 3rd part, the Father (being then seised in fee simple in possession of the properties mentioned in the First Schedule thereto subject to the mortgages mentioned in the Second Schedule thereto, but otherwise free from incumbrances) as part of a family arrangement, at the request of the Son, declared that the properties mentioned in the First Schedule thereto were vested in the Father in fee simple (subject to the mortgages mentioned in the Second Schedule thereto), Upon the trusts declared concerning the same by a Trust Instrument (meaning this Re-settlement) of even date, or upon such other trusts as the same ought to be held from time to time, And it was thereby declared that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925, that certain additional or larger powers were conferred by the trust instrument in relation to the settled land (being the powers

hereinafter mentioned) and that the power of appointing a new trustee or new trustees was vested in the Father during his life :

Title to policies subject to mortgages.

(5) The Father is entitled to the policies of assurance effected on his life mentioned in the —— Schedule hereto, subject to the mortgages mentioned in the —— Schedule hereto :

Agreement for Settlement.

(6) The Father and Son are desirous of making such Settlement as hereinafter contained, and in consideration thereof and of the increased jointure hereinafter limited to the said Jane B., she has agreed to join herein for the purpose of releasing the said jointure rentcharge of £—— limited to her by the Settlement of —— :

Provision as to costs.

(7) Upon the execution of the Disentailing Assurance it was agreed that the sum of cash and the investments conveyed by that deed, and then liable to be invested in the purchase of land to be settled upon the trusts of the Settlement of ——, should, with the consent of the said Jane B. (testified by her execution hereof), be received by the Son and the same cash and investments were accordingly disentailed by the said deed and limited to him absolutely, and it was agreed that thereout (so far as the same would extend) the costs and expenses of and incidental to the preparation and completion of the said deed, the Second Vesting Deed, and this Re-settlement should be paid by him, And it is intended that the said cash and investments shall be received by or transferred to the Son and applied by him accordingly, and that the surplus (if any) shall be retained by him for his own benefit, And that if the said cash and investments should not be sufficient to discharge all the said costs and expenses the balance should be discharged by the Father, and he has agreed to discharge the same accordingly.

Operative Part—Form No. 4, *p.* 247.

FIRST PART.

Appointment and Settlement of Land.

Appointment of properties in first vesting deed.

1. *Form No.* 6, *p.* 248, *after* " be held " *saying* " discharged from all powers of charging given to the Father by the Settlement of —— and so discharged, Upon the trusts hereinafter mentioned."

Release of property appointed from jointure.

2. The said Jane B. [with the concurrence of the Father,(*j*) and], for the purpose of releasing her said jointure rentcharge

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(*j*) If the jointress was married before 1883, she can only release her jointure with the concurrence of her husband under the Fines and Recoveries Act, 1833, as varied by L. P. Act, 1925, s. 167.

hereby releases [and disposes of and the Father hereby releases and confirms] unto the Trustees :

ALL the properties and rights hereinbefore appointed and all capital money investments and other property affected thereby,

To the intent that the same shall be wholly discharged from the said jointure rentcharge.

Declaration of trusts.

3. THE premises hereinbefore appointed and the premises comprised in the Second Vesting Deed shall be held by the Father and the persons deriving title under him Upon the trusts (*continue Form No.* 7, *p.* 249, *leaving out the release of powers of charging at the end of this form*) :

As to advowsons, as father and son appoint.

(1) As to the advowsons [respectively] mentioned in the First [and Second] Vesting Deed[s] Upon such trusts for such purposes and in such manner generally as the Father and Son shall by deed, revocable or irrevocable, from time to time jointly appoint :

As to other properties (except advowsons).

(2) And as to all other the premises (except the said advowsons),

Substituted pin-money.

(i) UPON TRUST that the said Jane B. may during the residue of the joint lives of herself and the Father (and so far as may be in satisfaction of the pin-money hereinbefore mentioned) receive out of the premises by way of pin-money, without power of anticipation during any coverture, the yearly rentcharge of £—— (*equal to or greater than the original pin-money*) to commence from the date hereof and to accrue from day to day, but to be paid, &c. (*as in Form No.* 8, *p.* 250) the first proportionate payment to be made on the date fixed for the next payment of the said original pin-money if the said Jane B. and the Father be then living and subject to the said rentcharge :

Substituted portions term.

(ii) UPON TRUST for the Trustees for a term of 1,000 years from the date hereof without impeachment of waste (in substitution so far as may be for the like term limited by the Settlement of ——) UPON TRUSTS after the death of the Father or in his lifetime with his consent for giving effect to the trusts of the original term aforesaid and raising all money [free from death duties and costs] required for that purpose and subject to the said term :

Term of 1,400 years.

(iii) UPON TRUST for the Life Estate Trustee for a term of 1,400 years without impeachment of waste Upon the trusts hereinafter mentioned and subject to the said term :

Rentcharge for son.

(3) UPON TRUST that the Son may during the joint lives of himself and the Father receive—*Form No.* 9, *p.* 251.

(4) And subject to the said rentcharge UPON TRUST for the Policy Trustee for the term of 120 years from the date hereof if the Father shall so long live, without impeachment of waste, Upon the trusts hereinafter declared concerning the same:

120 years' term if father so long lives.

(5) And as to all the premises, including advowsons, but subject as to the said advowsons to the joint power of appointment hereinbefore contained in relation thereto, and subject as to the premises other than advowsons, to the said terms of years and rentcharges hereinbefore limited UPON TRUST for the Father during his life [*or use Form No.* 12, *p.* 252, *if life interest is to be restored*] with remainder:

And as to all the premises including advowsons, life interest to father.

(6) As to all the premises except advowsons:

Limitation of jointure rentcharge to Jane B.—Form No. 13, *p.* 254, *saying* "premises (except advowsons)."

Jointure to mother.

(7) And as to all the premises, including advowsons (but subject to the foregoing limitations), UPON TRUST for the Son during his life, with remainder UPON TRUST for his first and other sons successively, according to seniority in tail male, with remainder UPON TRUST for H. B., the second son of the Father during his life, with remainder (*continue Form No.* 17, *p.* 258, *the ultimate limitation being to the Son in fee simple or absolutely*).

Remainder to eldest son for life.

His sons in tail male, &c.

SECOND PART.

Trusts of the Terms and Matters Relating thereto.

[*Add trusts of substituted portions term if required.—Adapt Form No.* 22, *p.* 264.]

4. THE Life Estate Trustee shall stand possessed of the said term of 1,400 years Upon the trusts following (that is to say):—

Trusts of 1,400 years' term to pay off charges on life estate.

(1) UPON TRUST from time to time, or at any time at the request in writing of the Father or his personal representatives, and either by demise by way of mortgage of all or any part of the premises comprised in the said term, or by any other means, to raise any sums of money not exceeding in the whole the sum of £——, which, when raised, shall be applied in paying off all or any of the mortgage debts or sums mentioned in the —— Schedule hereto, and amounting together to the sum of £——, and also in paying the costs and expenses of or incidental to the execution of the trusts of the said term of 1,400 years, and also all costs and expenses of or incidental to any transfers, releases or other dealings with the same mortgage debts which may become necessary or be proper, all such costs and expenses to be first admitted and approved by the Trustees, which admission or

Costs to be approved by trustees.

approval shall in all respects be conclusive as against all persons claiming under this Re-settlement.

To give mortgagees further security.

(2) AND also, if necessary and in the meantime UPON FURTHER TRUST from time to time at the like request to demise the premises or any part thereof by way of mortgage to or in trust for the persons for the time being entitled to the aforesaid mortgage debts amounting to £——, or to such of them as may not for the time being have been paid off as aforesaid To the intent that by such demises by way of mortgage or in trust a further security may be made for all or any of the same mortgage debts in consideration of the rate of interest thereon, or on such of them as shall be so further secured, being reduced, or that the same may be otherwise secured on more favourable terms, or that the persons entitled thereto may be induced not to call in the same or for any other reasonable purpose:

Subsequent incumbrancers not to marshal prior securities.

(3) PROVIDED that if after any such further security shall have been given under the trusts aforesaid the Father shall further mortgage or incumber his life interest in the premises hereby settled, the persons claiming under such further mortgages or incumbrances shall not be entitled to marshal the securities of the prior incumbrancers so as to throw the incumbrances of such prior incumbrancers on the said term of 1,400 years in exoneration of the life interest of the Father, in the aforesaid premises, but such life interest and the policies of assurance mentioned in the —— Schedule hereto, and any substituted policies, shall remain and be primarily charged with the incumbrances now affecting the same respectively in exoneration of the said term of 1,400 years and the premises therein comprised:

Leasehold property of the father exonerated from incumbrances.

(4) PROVIDED ALSO that the leasehold properties of the Father included in the securities for the mortgage debts Nos. —— and ——, mentioned in the —— Schedule hereto, shall by means of the trusts of the said term of 1,400 years be wholly exonerated from such debts, and as soon as may be shall be released and re-assigned to the Father discharged from the said securities.

Trusts of 120 years' term to keep down interest and premiums on life and fire insurances.

5. THE Policy Trustee shall stand possessed of the said term of 120 years, determinable with the life of the Father hereinbefore limited, UPON TRUST during the life of the Father, and upon the request in writing of the Trustees or of the Son, or his assigns or of any person interested in remainder to or in the premises comprised in the said term, or of the guardians of any such person, to raise, out of the rents and profits of the premises, all

money payable by the Father under the covenant on his part hereinafter contained, and also all other interest or annual sums for the time being chargeable on the premises or the life interest of the Father therein: And also all money required for paying the premiums for an insurance against loss or damage by fire of or to the mansion house of, &c., with the offices and outbuildings thereto, to the amount of £—— [And against loss or damage by fire of or to the furniture, chattels and effects hereinafter assigned and settled as heirlooms which are in or about the said mansion house of, &c., to the amount of £—— ;] And also all costs incurred incidental to the execution of this present trust, and all other money, whether herein referred to or not, which the Father during his life may be bound to pay as between himself and persons entitled in remainder after him.

Subject as aforesaid, rents to be received by reversioner.

6. SUBJECT to the trusts hereinbefore declared of the several terms hereinbefore limited the Trustees or Trustee thereof shall permit the rents and profits of the premises comprised therein, or so much thereof as shall not be wanted for the purposes aforesaid, to be received by the persons for the time being entitled to the same premises in reversion immediately expectant upon the same terms.

THIRD PART.

Power to Appoint Advowsons on Certain Trusts, Powers of Charging and Provisions as to Releasing Charges and Surrendering Terms.

Eldest son may appoint advowsons on certain terms.

7. WITHOUT prejudice to any previous exercise of the joint power of appointment hereinbefore conferred on the Father and Son in regard to the said advowsons, but so as to overreach the same power so far as it shall not have been exercised, the Son may by deed, revocable or irrevocable, or by Will or codicil, appoint the same advowsons or any of them to be held after the death of the Father UPON TRUST (subject to the rules relating to remoteness) for any one or more exclusively of the other or others of the issue male of the Son (other than an eldest or only son for the time being), or of the husband of any daughter of the Son, with power at any time within twenty-one years from the death of the survivor of the Father and Son to present to any of the said benefices any one or more of the issue male of the Son (other than as aforesaid), or if there shall be no issue

male desirous or capable of being presented, then any such husband as aforesaid.

Power for eldest son to charge for his own use.

8. The Son may by deed, revocable or irrevocable, or by Will or codicil (subject to the limitations hereinbefore contained having priority to his life interest hereby limited, but in priority to all other limitations, powers and provisions herein contained or to be limited under any powers of jointuring and charging portions herein contained) charge all or any of the premises hereby settled (except advowsons) with any sum (*continue as in Form No.* 25, p. 271, *down to* "raising the same," *and saying* "(but subject as aforesaid) appoint."

[9 and 10. *Add here, if required, power for the father to appoint a jointure on a future marriage, and to charge portions on a future marriage corresponding to the powers released by him – adapt Forms Nos.* 27, *p.* 274, *and* 28, *p.* 275.]

Power for tenants for life (except the father) to jointure, &c., the eldest son having power to jointure during the father's life-time.

11. The Son and every other person (except the Father) hereby made tenant for life of the premises hereby settled, may (*continue and adapt Form No.* 29, *p.* 277, *saying* "(but in the case of the Son, subject to the limitations hereinbefore contained having priority to the life interest of the Father and to the jointure rentcharge hereinbefore limited to the said Jane B., and to any jointure or portions charged under any power hereby conferred on the Father, and in the case of every such other person subject, &c.)," *and saying* "all or any of the premises (except advowsons), &c.," *and saying,* "Provided that any rentcharge appointed under this power by a person other than the Son shall not become a lien, &c.," *and saying,* "Provided also, that the premises or any of them shall not, under an exercise by any person other than the Son of this power be, &c.") :

Restrictions as to jointure charged by eldest son.

Provided also, that the annual sum payable in respect of any rentcharge appointed under this power by the Son to any wife of his shall not, during the life of the Father, exceed the annual sum of £——, and if the said Jane B., or any other wife of the Father shall survive the Father, shall not during the residue of her life exceed the annual sum of £——.

Power for eldest son to charge portions.

12. The Son and every other person (except the Father), &c. (*as in last clause, and adapt Form No.* 30, *p.* 278, *down to the commencement of the first proviso, saying* "(but subject to the exercise of the power of jointuring hereinbefore limited to him and to any jointure rentcharge created under that power and to all limitations and charges to which it is hereinbefore

provided that a jointure rentcharge so created shall be subject)," *using variations in last clause, and saying also* "charge all or any of the premises hereby settled (except advowsons)."

13. *Power to release rentcharges—Form No.* 31, *p.* 280.

14. *Power to surrender terms—Form No.* 32, *p.* 281.

Fourth Part.

Assignment and Settlement of Policies and Provisions Relating thereto, and to the Incumbrances.

Assignment of policies.

15. The Father, As Settlor, hereby assigns unto the Trustees: All those the policies of assurance mentioned in the —— Schedule hereto, and all money thereby assured, or which may hereafter become payable thereunder, and the full benefit of the said policies,

Habendum.

To have and receive the same unto the Trustees absolutely, subject to the mortgages mentioned in the —— Schedule hereto,

Trust to pay mortgage debts affecting life interest and other property of the father.

Upon trust that the Trustees shall enforce payment of and receive the money assured by or payable under the said policies as and when the same respectively become payable, and thereout, in the first place, reimburse themselves and pay all costs and expenses incurred in enforcing payment of and receiving the same, and then apply such money in or towards satisfaction of the aforesaid mortgage debts amounting to £——, mentioned in the —— Schedule hereto, or so much thereof as may not have been discharged out of money raised under the trusts of the said term of 1,400 years, or otherwise, and also in or towards satisfaction of any money raised under the trusts of the said term of 1,400 years and for the time being due, and so that such last-mentioned money may be paid off in any order without reference to the priorities thereof: And the Trustees shall stand possessed of the surplus (if any) of the money received under the said policies, after answering the purposes aforesaid Upon the trusts (*take Form No.* 36, *p.* 283).

Covenant by father to keep up policies, and pay interest on incumbrances during his life.

16. The Father hereby covenants with the Trustees in manner following (that is to say), that the Father will not by any act (*continue Form No.* 49, *Settlements* (*Personal*), *p.* 148, *supra* (*first paragraph*), *saying* "And will during his life duly pay and keep down the interest on all the incumbrances which shall for the time being affect the premises hereby settled, or any of them, or the life interest of the Father therein, and also from time to time duly pay all money, &c.," *and saying* "deliver, or

if necessary assign (subject to such, if any, of the mortgages mentioned in the —— Schedule hereto as may affect the same) every such substituted policy, and deliver the receipt for, or other sufficient evidence of, &c., and every policy so effected" (*continue to end of second paragraph*).

Trustees not to be liable if policies not kept up.

17. PROVIDED that the Trustees shall not be bound to see or inquire whether the said policies or any of them or any substituted policy or policies are kept on foot, restored or renewed, nor to enforce performance of the covenant hereinbefore contained, nor be in any way answerable or liable on account of any omission or neglect to keep on foot, restore or renew the said policies or any of them, or to enforce the trusts of the said term of 120 years hereinbefore limited, or otherwise with reference to the said policies or any of them, unless and until required in writing so to do by some person or the guardian of some person beneficially interested.

On discharge of life estate incumbrances property hereby settled to be held on trusts hereof.

18. (1) FROM time to time, upon payment off of the respective life estate incumbrances mentioned in the —— Schedule hereto, the several terms and other interests created or conveyed for securing the same shall be assigned and surrendered, so that—

(i) As regards the premises hereby settled, the same may remain and be Upon the trusts hereof, discharged from such incumbrances, and that the limitations hereinbefore contained may take effect in like manner as if the respective persons in whom such terms and other interests are now vested had been paid all money due to them and had joined in this Deed to release the said life interest and policies.

The property of father not hereby settled to remain his.

(ii) As regards the properties of the Father affected by the said incumbrances which are not hereby settled, the same may be released, assigned and surrendered to the Father, discharged from any incumbrances thereon mentioned in the —— Schedule hereto.

Indemnity to father's estate in regard to mortgages affecting the inheritance.

(2) PROVIDED that all principal sums and the interest accruing after the death of the Father secured by the mortgages respectively mentioned in the First and Second Vesting Deeds and affecting the inheritance shall be primarily charged upon and payable out of all the properties charged therewith and hereby settled, and the balance of the money received in respect of the policies hereby assigned (not required for discharging the mortgages mentioned in the —— Schedule hereto) in exoneration of the Father and his estate and effects, but not so as to confer any right or remedy on a mortgagee.

FIFTH PART.

Additional or Larger Powers.

(*Add Forms in Sect.* VIII, *pp.* 289–98, *as required. Also insert a provision that capital money arising from any part of the settled land may be applied in discharging the incumbrances mentioned in the First and Second Vesting Deeds.*)

SIXTH PART.

Provisions as to Trustees, and Miscellaneous Provisions.

(*Add Forms in Sect.* IX, *pp.* 298–306, *including covenant for further assurance of advowsons, Form No.* 67, *p.* 301.)

IN WITNESS, &c.

THE —— SCHEDULE.

Particulars of the Policies on the life of the Father hereby assigned.(*k*)

Date of Policy.	Number.	Office in which effected.	Amount assured exclusive of bonuses.	Half-yearly Premium.
1.				
2.				

THE —— SCHEDULE.

Particulars of Mortgages affecting the life interest of the Father and the above-mentioned Policies [and other property].

Date.	Names of Present Mortgagees.	Property charged.	Amount owing.	Rate of Interest.

(*k*) Notice in writing of the assignment of the policies must be given to the insurance societies and to the mortgagees.

Notice.

Joint powers of appointment; registered land.

In the 21st edition a precedent of a transfer of registered land was given to cover the case where the donees of a joint over-riding power of appointment were to be registered as proprietors. This form is no longer available, for a power of appointment when exercised only creates an equitable interest (as was formerly the case in regard to personal estate), see L. P. Act, 1925, s. 1. The register kept under the L. R. Act, 1925, is only concerned with legal estates: *ib.*, s. 2; just as vesting instruments are, as respects unregistered land, only concerned with legal estates. A tenant for life is the legal owner and trustee of settled land, hence when the title is registered he must be registered as proprietor: L. R. Act, 1925, ss. 86 and 92. If donees of a power of appointment have been registered they are bound to transfer the land to the tenant for life: *ib.*, s. 87 (3). If the donees were the registered proprietors on 1st January, 1926, the register can be rectified by registering the tenant for life without a transfer; no fee is charged: *ib.*, s. 92, proviso.

Rectification of register in favour of tenant for life.

No. XIIa.

VESTING DEED *for providing* Pin-money, Jointure *and* Portions.(*l*) (*Legal Estate.*)

Parties.

THIS VESTING DEED is made, &c., Between A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part: Whereas:—

(1) *Agreement for marriage—Form No.* 1, *p.* 246:

Seisin.

(2) The Husband is seised in fee simple, in possession, free from incumbrances, of the freehold properties hereinafter described:

(3) *Agreement for settlement—Form No.* 2, *p.* 246:

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

Declaration of trust.

1. The Husband, As Settlor, hereby declares that:

All, &c. (*parcels, by reference to First Schedule*), are vested in the Husband in fee simple [*or* "for the residue of the terms mentioned in that Schedule"],

Reference to trust deed of even date.

Upon the trusts declared concerning the same by a Trust Instrument (*see next Precedent*), bearing even date, and executed contemporaneously herewith, and made between the same parties, and in the same order or upon such other trusts as the same ought to be held from time to time.

S. L. Act trustees.

2. The Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. The additional or larger powers mentioned in the Second Schedule hereto are conferred by the said Trust Instrument in relation to the settled land, and by virtue of the said Act, operate and are exercisable as if conferred by that Act on a tenant for life.

New Trustees.

4. The power of appointing new trustees of the Settlement is vested in the Husband during his life.

In witness, &c. (*Add two Schedules. In the second set out the powers in full.*)

Absolute owner subject to family charges.

Concurrence of person entitled to equitable interest.

(*l*) The mere creation of these family charges converts the settlor into a tenant for life, though he retains the fee simple subject thereto: S. L. Act, 1925, ss. 1 and 20. As to an absolute owner making title subject to family charges: L. P. (Amend.) Act, 1926, s. 1. This is not a transaction to be encouraged, but it may be necessary when he raises money for his own benefit. A stipulation that a person entitled to an equitable interest shall join is void if title can be made without such concurrence: L. P. Act, 1925, s. 42 (1).

No. XIIb.

TRUST INSTRUMENT *by* Husband *of* Land *to secure* Pin-money *and a* Jointure *to intended* Wife, *and Portions for all his* Children; Provision *enabling the* Settlor *to* substitute *other* Property *as a Security for Jointure and Portions.* (*Equitable Interests.*)

Parties.

THIS TRUST INSTRUMENT is made, &c., Between A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part: Whereas:—

Agreement for marriage.

(1) *Agreement for marriage—Form No.* 1, *p.* 246.

Vesting Deed.

(2) By a Deed (hereinafter called the Vesting Deed), bearing even date herewith, and made between the same parties and in the same order, certain freehold [leasehold] properties in the County of ——, were [stated to be] vested in the Husband Upon the trusts declared concerning the same, by a trust instrument of even date (meaning this Deed):

Agreement for Settlement.

(3) *Agreement for Settlement—Form No.* 2, *p.* 246.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

Declaration of trust.

1. The Husband hereby agrees that he will hold the property described in the Vesting Deed, In trust for himself [in fee simple] until the solemnisation of the said marriage, and thereafter Upon the trusts following, namely:—

Pin-money.

(1) *Form No.* 8, *p.* 250.

Life interest for husband.

(2) *Form No.* 11, *p.* 252. *Add* "without impeachment of waste."

Jointure.

(3) *Form No.* 13, *p.* 254.

Portions term.

(4) *Form No.* 14, *p.* 255.

(5) Upon trust for the Husband in fee simple [*or* absolutely].

Trusts of Portions Term.

2. *Trusts of Portions Term—Form No.* 22, *p.* 264; *adapt so as to extend to all the children of the marriage.*

Power to release jointure.

3. *Power for Wife, if restrained from anticipation, to release pin-money and jointure—Form No.* 31, *p.* 280.

Power for Trustees to surrender Portions Term.

4. *Power for Trustees to surrender Portions Term—Form No.* 32, *p.* 281.

5. Provided that if the Husband shall at any time hereafter make other provision for securing the said pin-money, jointure, and the money raisable for portions or otherwise to the satisfaction

Power for husband to substitute other land or investments as a security.

of the Trustees, either by settling by means of a vesting deed other freehold or leasehold property of sufficient value Upon the trusts and subject to the powers and provisions hereinbefore declared concerning the premises hereby settled, or by investing in the names or under the control of the Trustees in any investments authorised by law as investments for trust money or in any other investments of the nature hereinafter authorised, such a sum as in the opinion of the Trustees will be sufficient for that purpose, or partly in one way and partly in another, then and in such case this Settlement shall cease so far only as regards the property not retained for the purposes aforesaid, and the Trustees shall, as regards any land not retained for those purposes, execute at the cost of the Husband a Deed of Discharge in accordance with the provisions of section seventeen of the Settled Land Act, 1925.

[*Add additional powers in Sect.* VIII, *pp.* 289–98, *as required, including in particular Form No.* 44 (*interim investments*) *and such of the miscellaneous provisions in Sect.* IX, *pp.* 298–306, *including in particular Form No.* 68 (*appointment of S. L. Act trustees*) *and Form No.* 69 (*power for Husband to appoint new trustees*).]

IN WITNESS, &c.

No. XIII.

DEED OF DISCHARGE *on termination of the* SETTLEMENT *in the lifetime of the* TENANT *for* LIFE, *pursuant to section seventeen of the* SETTLED LAND ACT, 1925.(*m*) (*Legal Estates.*)

Parties.

THIS DEED OF DISCHARGE is made (*date*), BETWEEN X., of, &c., and Y., of, &c. (hereinafter called the Trustees), of the one part, and T. L., of, &c. (hereinafter called the Estate Owner), of the other part: WHEREAS:—

Principal and subsidiary vesting instruments.

(1) This Deed is supplemental to the Principal and Subsidiary Vesting Instruments mentioned in the First Schedule hereto (hereinafter called the Scheduled Vesting Instruments) under

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Other means of termination of Settlements. Termination in lifetime of tenant for life. Partial discharge.

(*m*) As a general rule a settlement comes to an end on the death of a tenant for life; in this case his personal representatives will execute an absolute assent or an assent on trust for sale (as the case requires) in favour of the persons then entitled and no deed of discharge will be required: S. L. Act, 1925, s. 110 (5). A settlement may come to end during the lifetime of a tenant for life (see, *e.g.*, last Precedent, and S. L. Act, 1925, s. 7), and then a deed of discharge will be required. As to the duration of settlements: *ib.*, s. 3, as amended by L. P. (Amend.) Act, 1926, Sch. For a deed of partial discharge, see Prec. XIX, *infra*.

which the Estate Owner is now entitled to the freehold and leasehold properties and rights therein comprised in or arising in the Counties of —— and —— save in so far as the same have been sold or otherwise absolutely disposed of :

Conveyances on sale and exchange.

(2) The Second Schedule hereto contains short particulars of the Conveyances on Sale and Deeds of Exchange disposing of the parts of the properties formerly subject to the Scheduled Vesting Instruments :

Legal incumbrances.

(3) The Third Schedule hereto contains short particulars of the legal mortgages and legal rentcharges (not including tithe rentcharges) affecting the properties or parts thereof remaining subject to the Scheduled Vesting Instruments :

S. L. Act Trustees.

(4) As appears from the Deeds of Declaration mentioned in the Fourth Schedule hereto and from the endorsements on the Scheduled Vesting Instruments or some of them, the Trustees were immediately before the termination of the Settlement referred to in those instruments, or some of them, the Trustees thereof for the purposes of the Settled Land Act, 1925 :

No notice of derivative settlement, trust for sale or equitable charge.

(5) The Trustees have no notice (*n*) of any derivative settlement, trust for sale or equitable charge (*o*) affecting the properties and rights remaining subject to the Scheduled Vesting Instruments :

Request for discharge.

(6) The Estate Owner has requested the Trustees to execute such discharge as is hereinafter contained, which they have agreed to do, in manner hereinafter appearing :

Discharge.(*p*)

NOW, pursuant to section seventeen of the Settled Land Act, 1925, THIS DEED WITNESSETH, and the Trustees hereby declare that they are discharged from the trust created by the Settlement referred to in the Scheduled Vesting Instruments [or some of them] so far as regards the properties and rights comprised in those instruments or any of them.

IN WITNESS, &c. [*Add Schedules.*]

Notice of derivative settlement, &c.

(*n*) If they have notice of a derivative settlement (*e.g.*, made by a former remainderman whose estate has fallen into possession) the deed of discharge must refer to the vesting deed (which should be of even date) and the trust instrument. If they have notice of a conveyance or assent on trust for sale it must refer to that. This may involve a further assurance by the estate owner of the legal estate.

Equitable charges. Purchasers.

(*o*) If they have notice they must see either that a legal mortgage (of even date) is made, or that a land charge has been registered, or the deeds have been deposited, or that the chargee consents. As to the protection of purchasers, see *ib.*, ss. 17 (3), 110 (2) (e).

Effect of discharge.

(*p*) The effect of the deed is to free the land from the restrictions imposed by *ib.*, s. 18, so that the estate owner will be able to convey the legal estate as if the land had not been settled by the settlement which has determined.

No. XIV.

APPOINTMENT (*on* MARRIAGE) *of a* JOINTURE *and* CHARGE *of* PORTIONS *by a* TENANT *for* LIFE *in* POSSESSION *under a* SETTLEMENT.(*q*) VARIATIONS *where* SETTLOR *retains Power to provide for* ISSUE *of* SUBSEQUENT MARRIAGE. (*Equitable Interests.*)

Parties.

THIS APPOINTMENT AND CHARGE made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, Jane C., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Agreement for marriage.

(1) *Agreement for marriage—Form No.* 1, *p.* 246:

Settlement giving powers to charge.

(2) This appointment is supplemental to a Deed (hereinafter called the Settlement) dated, &c., and made, &c., being a Trust Instrument declaring the trusts of the —— Estates, in the County of ——, comprised in a Vesting Deed, dated, &c. [*or* of even date], [which included the freehold properties mentioned in the Schedule hereto (*r*)], under which Settlement the Husband is now tenant for life in possession and has power to make such appointments and charge as hereinafter appearing:

Agreement for Settlement.

(3) *Agreement for Settlement—Form No.* 2, *p.* 246:

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

Appointment of jointure.

1. THE Husband, in exercise of the power for this purpose conferred on him by the Settlement and of every other power enabling him, and, As Settlor, hereby irrevocably appoints to the Wife, in case the said marriage shall be solemnised and she shall survive the Husband, during the residue of her life the yearly rentcharge of £—— by way of jointure to be issuing out of and

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(*q*) As the donee of the power of charging is, in this case, tenant for life in possession, the appointment and charge must be capable of taking effect, see Forms Nos. 27 and 28, pp. 274–5. If he is tenant for life in remainder with powers of charging jointures and portions which take effect in any event, see next Precedent. If he has a remote life interest in remainder and a power of charging jointures and portions which only become a lien if he becomes entitled in possession, see Prec. XVI, p. 375.

Notices.

It will save costs if the S. L. Act trustees agree to act as trustees of the portions term. If they are not parties, notice in writing must be given to them of the appointment and charge. A land charge cannot be registered: L. C. Act, 1925, s. 10, Class C (iii); the jointure is an interest arising under a settlement.

Variations where only part of the land is to be charged.

(*r*) This and the subsequent variations in square brackets are for use where only part of the settled land is to be charged.

to be charged in equity on all the real estate and chattels real (except advowsons) now subject to the subsisting trusts of the Settlement [the property described in the Schedule hereto], and to commence from the death of the Husband and to be considered (*continue Form No.* 13, *p.* 254, *down to* "living ").(*s*)

Charge of portions.

2. (1) The Husband, As Settlor, hereby irrevocably charges all the real estate and chattels real (except advowsons) now subject to the subsisting limitations of the Settlement [the real estate described in the Schedule hereto] (but subject and without prejudice to the jointure rentcharge hereinbefore limited and the remedies for recovery thereof) with the payment of the principal sums and interest and other money hereinafter directed to be raised under the trusts of the term hereinafter limited :

Appointment of term and trusts thereof.(*t*)

(2) The Husband, As Settlor, hereby appoints that all the said properties shall (subject and without prejudice as aforesaid) remain and be held, Upon trust for the Trustees for the term

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Statutory remedies.

(*s*) The rentcharge will have incident thereto the powers conferred by L. P. Act, 1925, s. 121, but as the jointress cannot have a legal rentcharge, she can only create an equitable term for raising arrears : *ib.*, sub-s. (4) ; also *ib.*, s. 8 (1), till legal effect is given to a mortgage by the estate owner ; as to this, see S. L. Act, 1925, s. 16.

Powers of appointment must regulate the form of the appointment.

The operative parts in this deed must depend upon the form of the power of appointment.

Overreaching joint power of appointment.

If the appointor has a general power of appointment which has priority over the powers to jointure and charge portions a declaration is usually added that this power shall not be exercised, "except subject and without prejudice to the Appointment and Charge hereby made."

As a rule, however, such a declaration would be unnecessary. In the case of conflicting powers that first exercised prevails.

Variations where settlor desires to retain the power to make provision for issue of a subsequent marriage.

(*t*) Where the settlor desires to retain the power to make provision for his issue by any subsequent marriage several courses are open to him :—

Charge of part of the land.

(1) He can charge part only of the land subject to the power. This enables him to deal with the excepted part on a future marriage (see variations in the text) ; but this may be of no use to him if he has already charged the maximum sum authorised.

Charge of part of the total amount raisable.

(2) He can charge part only of the aggregate amount raisable under the power, *e.g.*, where the limit is £20,000, charge only £10,000 in favour of issue of the intended marriage.

Charge in favour of all issue by any marriage,

(3) He can exercise the power to the full extent, saying in clause 2 (2) in the text :—

If there shall be any child or children of the now intended or any subsequent marriage of the Husband, and adding the following proviso for the protection of the issue of the intended marriage :—

Provided that the aggregate amount of principal money distributable among the issue (if any) of the now intended marriage, whether under or in default of appointment, shall not, of 800 years to commence from the death of the Husband, without impeachment of waste, UPON TRUST that the Trustees shall if there shall be any child or children of the now intended marriage who (*continue and adapt Form No.* 22, *p.* 264, *and refer to the* "limitations of the Settlement" *and* "the premises subject to the limitations of the Settlement"). *Add at the end of the trusts of the term the following sub-clause to authorise the Trustees to give a discharge without the concurrence of the Portioners :*

"The trustees or trustee (*u*) for the time being of the said term shall have power to give valid receipts for all money raisable under the foregoing charge or the trusts of the said term."

3. (*Add power for the Trustees to surrender the term—Form No.* 32, *p.* 281.)

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protecting issue of intended marriage.

if any child of the now intended marriage becomes capable of taking a vested interest in default of appointment, be less than the sum of £——.

(4) He can exercise the power as in the text, and reserve the following power :—

Power for Husband to appoint that children of a subsequent marriage shall share in portions.

(1) IF the Husband marries again he may by any deed or by his Will or codicil appoint that his children or issue by any such subsequent marriages (being issue capable of taking under the powers of charging conferred by the Settlement) shall share in the portions and other money hereby charged ; And in such case the foregoing provisions shall take effect in all respects as if such children or issue of any such subsequent marriages had been issue of the now intended marriage :

But in such case the children of a subsequent marriage not to take a larger proportion than children of intended marriage.

(2) PROVIDED that the part of the money hereby provided for portions to which the issue of any subsequent marriages shall become entitled under any appointment to be made by the Husband pursuant to the power for that purpose hereinbefore conferred on him as extended by this clause or otherwise shall not bear a greater proportion to that part of the money which the issue of the now intended marriage shall take between them than the number of children of such subsequent marriages capable of taking vested interests shall bear to the number of children of the now intended marriage capable of taking vested interests.

Number of trustees of portions terms.

(*u*) No restriction applies as to the number of trustees of an equitable portions term : T. Act, 1925, s. 34 (3) ; but to save expense it is usual to appoint the S. L. Act trustees to be trustees of portions terms. The restrictions as respects the giving of receipts (L. P. Act, 1925, s. 27 (2), as re-enacted by L. P. (Amend.) Act, 1926, Sch. ; and S. L. Act, 1925, ss. 94 and 95) only apply to trustees for sale and to S. L. Act trustees.

4. THE Husband during his life shall have power from time to time to appoint a new trustee or new trustees hereof. Power to appoint new trustees.

IN WITNESS, &c.

[THE SCHEDULE.]

[Particulars of lands hereby charged.]

No. XV.

APPOINTMENT (*on* MARRIAGE) *of a* JOINTURE *and* CHARGE *of* PORTIONS *by a* TENANT *for* LIFE *in* REMAINDER *where the* POWER *of charging is* ABSOLUTE *and the Charges take effect in any event.*(v) (*Equitable Interests.*)

THIS APPOINTMENT AND CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, Jane C., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:— Parties.

(1) *Agreement for marriage—Form No.* 1, *p.* 246*:* Agreement for marriage.

(2) This Appointment is supplemental to a Deed (hereinafter called the Settlement) dated, &c., and made, &c., being a Trust Instrument declaring the trusts of the —— Estates, in the County of ——, comprised in a Vesting Deed dated, &c. [*or* of even date], under which Settlement F. B. (*the father of A. B.*) is now tenant for life in possession and the Husband is tenant for life in remainder immediately expectant on the death of his father, the said F. B., and has power to make such appointments and charges as hereinafter appearing: Settlement.

(3) *Agreement for Settlement—Form No.* 2, *p.* 246. Agreement for Settlement.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

1. THE Husband, in exercise of the power for this purpose conferred on him by the Settlement and of every other power enabling him, and, As Settlor, hereby irrevocably appoints to, &c. Charge of jointure.

(v) *Cf.* next Precedent, and see last Precedent for variations where the settlor retains the power to provide for issue of a subsequent marriage; see also variations in Forms Nos. 27 and 28, pp. 274–5. Notices.

Notice in writing of the appointment and charge should be given to the S. L. Act trustees, if they are not parties; it is expedient also to give notice to the tenant for life in possession.

(as in last Precedent(w)), or if the rentcharge is reducible during the lifetime of a prior jointress, e.g., the Husband's mother, either recite the power when reciting the Settlement, charge the rentcharge to the full amount, and say at the end of the clause—

Variation where rent-charge is reducible.

PROVIDED that the rentcharge hereby limited shall be reducible in the events and in manner mentioned in the Settlement, *or limit the rentcharge in some such manner as follows, according to the requirements of each case—*

UPON TRUST that the Wife, in case she shall be living at the death of [the survivor of] the Husband [and the said F. B.], shall during the residue of so much of her life as the said —— (*Husband's mother*) shall be living receive the yearly rentcharge of £2,000, and shall after the death of the said —— (*Husband's mother*) receive during the residue of her life the yearly rentcharge of £3,000, the said rentcharge of £2,000 to commence from the death of [the survivor of] the Husband [and the said F. B.] if the said —— (*Husband's mother*) is then living and the said alternative rentcharge of £3,000, to commence either from the death of [the survivor of] the Husband [and the said F. B.] if the said —— (*Husband's mother*) dies in his lifetime [in the lifetime of such survivor], or if the said —— (*Husband's mother*) survives him [the Husband and the said F. B.], then from her death, each of the said rentcharges (when payable) to be considered as accruing from day to day, but to be paid without any deduction (except in respect of [death duties and] income tax) by equal half-yearly payments, the first payment thereof to be made at the end of six months from the date of the commencement of the rentcharge if the Wife shall then be living; And so that in case the said rentcharge of £2,000 takes effect and is subsequently replaced by the said rentcharge of £3,000, then a proper proportion of the said rentcharge of £2,000 shall be forthwith paid down to the date of the cesser thereof.

The rest of this Precedent will follow clauses 2 and 3 of the last Precedent. If the portions are reducible in certain events, the power to charge will be recited in the recital of the Settlement, the portions charged to the full amount, and the following proviso added—

Variation where the portions are reducible.

PROVIDED that the sums raisable for portions under the trusts hereof shall be reducible in the events and in manner mentioned in the Settlement.

Variation if not payable during life of the father-in-law.

(w) If the rentcharge is not payable during the lifetime of F. B., the father-in-law, then it should be limited "after the death of the survivor of the Husband and the said F. B."

4. THE Husband during his life shall have power to appoint a new trustee or new trustees hereof.

IN WITNESS, &c.

No. XVI.

APPOINTMENT (*on* MARRIAGE) *of a* JOINTURE *and* CHARGE *of* PORTIONS *by a* TENANT *for* LIFE *in* REMAINDER *where the* POWER *of* CHARGING *is* CONTINGENT *and the* CHARGES *will not take effect unless the* SETTLOR *becomes entitled in* POSSESSION.(*x*) (*Equitable Interests.*)

Parties.

THIS APPOINTMENT AND CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, Jane C., of, &c., Spinster (hereinafter called the Wife), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Agreement for marriage.

(1) *Agreement for Marriage—Form No. 1, p.* 246:

Settlement giving powers of charging.

(2) This Appointment is supplemental to a Deed (hereinafter called the Settlement) dated, &c., and made, &c., being a Trust Instrument declaring the trusts of the —— Estates, in the County of ——, comprised in a Vesting Deed dated, &c. [*or* of even date], under which Settlement the said A. B. is now tenant for life in remainder expectant on the failure of certain prior limitations and has power to make such appointments and charge as hereinafter appearing, but such appointments and charge will not become a lien upon the said estates unless and until the Husband shall be or become entitled to the possession or to the receipt of the rents and profits of the same estates or some issue of his shall or, if of full age, would be so entitled:

Agreement for Settlement.

(3) *Agreement for Settlement—Form No. 2, p.* 246:

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

1 and 2. (*As in Prec.* XIV, *p.* 370, *the term being made to commence from the death of the Husband.*)

Charges not to take effect unless the Settlor or his issue become entitled.

3. PROVIDED that the appointments and charge hereby made shall not become a lien upon the properties for the time being subject to limitations of the Settlement, unless the Husband shall be or become entitled to the possession or to the receipt of the

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Notices.

(*x*) *Cf.* last two Precedents and notes thereto, and see Forms Nos. 29, p. 277, and 30, p. 278. Notice in writing of the appointment and charge should be given to the S. L. Act trustees, if they are not parties, and it is expedient also to give notice to the tenant for life in possession, who is the estate owner.

rents and profits of those properties or some issue of his shall or, if of full age, would be so entitled; And the rentcharge and term hereby appointed shall take effect in the order of limitations immediately after the life interest of the Husband, and shall be liable to reduction as provided by the Settlement.

Power to appoint new trustees.

4. (*As in clause* 4 *of Prec.* XIV, *p.* 370.)

IN WITNESS, &c.(y)

No. XVII.

RELEASE OF LANDS *sold or otherwise disposed of from a* JOINTURE RENTCHARGE(z) *the* CHARGE *being* SHIFTED. (*Equitable Interest affecting the* LEGAL *title.*)

Parties.

THIS RELEASE is made (*date*), BETWEEN Jane B., of, &c., Widow, of the one part, and A. B., of, &c. (hereinafter called the Tenant for Life), of the other part: WHEREAS:—

Compound settlement.

(1) Under the Will of the late —— [Settlement of 18—] and the other instruments mentioned in the Schedule hereto the Tenant for Life is now tenant for life in possession of certain estates in the Counties of —— and —— and [as appears from the Order of the Court mentioned in that Schedule] X. and Y. are

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Family charges overreachable.

(y) In the 21st edition a Precedent was given of a deed authorising a tenant for life to overreach a jointure created by an instrument having priority to the settlement creating the life interest. This is no longer required, for in all cases the S. L. Act trustees of the compound settlement will act: S. L. Act, 1925, s. 1 (1), hence all family charges will be overreachable.

Enrolment at Central Office.

(z) Arrangements should be made to enrol this deed at the Central Office. so that all the former purchasers may be able to inspect it.

Power for absolute owners to make title subject to family charges or freed therefrom.

The object of this deed is to free the land in the hands of the purchasers, or the persons deriving title under them, from the jointure. It is assumed that before 1926 the tenant for life had sold land subject to but indemnified against the jointure, not having obtained an appointment of S. L. Act trustees of the compound settlement by the court. Under L. P. (Amend.) Act, 1926, s. 1, the purchasers, and the persons deriving title under them, can dispose of the land acquired subject to a family charge with the benefit of the indemnity, and L. P. Act, 1925, s. 42 (1), does not prevent this where the contract stipulates that the land is sold subject to the charge; still, the title is and always has been unsatisfactory, and where it is feasible to clear it this should be done. Nothing has been done to prevent the purchaser from making a title under a compound settlement, of which his conveyance would form part, freed from the charge, but this is not a course he would usually be advised to adopt. On the other hand, a tenant for life (not being an absolute owner) is not, after 1925, in a position to make a title to the settled land to a purchaser subject to a family charge, hence these indifferent titles will gradually become extinct.

Appointment by the court of trustees of a compound settlement.

When the court appoints trustees of a compound settlement it is only concerned with the instrument creating the settlement under which the applicant is tenant for life, it can ignore previous conveyances to purchasers forming parts of other settlements: *Re Ogle* (1926), W. N. 227.

the present trustees (*a*) of the said Compound Settlement for the purposes of the Settled Land Act, 1925:

Creation of jointure.

(2) By the said Will [the Settlement of ——] a yearly rentcharge of £—— was limited to the Jointress if (as happened) she survived her husband, the late F. B. (who died on ——), during the residue of her life and the said jointure rentcharge affects the estates aforesaid and also certain other properties which have been sold or otherwise disposed of as hereinafter mentioned:

Dispositions under the Re-settlement.

(3) Between the years 19— and 1926 the Tenant for Life sold, exchanged or otherwise disposed of, certain properties and rights as tenant for life in possession under the Re-settlement mentioned in the Schedule hereto and all capital money arising on those transactions was paid to the Trustees for the time being of the said Re-settlement for the purposes of the Settled Land Acts, 1882 to 1890, there being at the respective dates of completion of the said transactions no trustees of the said Compound Settlement:

Dispositions subject to but indemnified against the rentcharge.

(4) On each of the said transactions the said properties and rights were conveyed subject to the said jointure rentcharge, but exonerated (so far as might be) by the other property charged therewith,(*b*) and the Tenant for Life entered into covenants for keeping the properties disposed of effectually indemnified against all claims in respect of the said rentcharge:

Agreement to release.

(5) The Jointress being satisfied that the property remaining undisposed of and affected by the said rentcharge is more than ample to secure the payment of the same has, at the request of the Tenant for Life, agreed to execute such release as is hereinafter contained:

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

Release of property disposed of.

1. THE Jointress, As Mortgagee, hereby releases ALL the properties and rights formerly subject to the limitations of the said Compound Settlement which, before the 1st January, 1926, have been disposed of to a purchaser, mortgagee or lessee, from

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Order of court, when unnecessary.

(*a*) It is not necessary that there should have been an order of the court appointing trustees, for under L. P. (Amend.) Act, 1926, Sch. (amending S. L. Act, 1925, s. 31), the trustees of the Re-settlement under which the Vendor took his life interest (if there were such trustees), would, in default of an order, become the trustees of the Compound Settlement for the purposes of the S. L. Act, 1925.

Exoneration from charges.

(*b*) The power to exonerate land from a charge conferred by S. L. Act, 1925, s. 49 (1) (c), is new. It is only required now to exonerate land from a liability which cannot be overreached.

all claims and demands in respect of the said jointure rentcharge, but as regards mortgages, leases and tenancies only so far as may be necessary to confirm the same.

Shifting of the jointure.(c)

2. In exercise of the power for this purpose conferred by section sixty-nine of the Settled Land Act, 1925, and of all other powers, the Tenant for Life, at the request and with the consent of the Jointress, hereby declares that all the property and rights, including capital money and securities representing capital money now by any means subject to the limitations or trusts of the said Compound Settlement (other than advowsons and heirlooms or capital money arising from heirlooms), whether or not already charged with the payment of the said jointure rentcharge, shall henceforth stand charged therewith in exoneration of the premises hereinbefore released To the intent that the Jointress shall be in the same position in all respects and have the like rights as if the transactions hereinbefore referred to had been carried out after trustees of the said Compound Settlement had been appointed and all capital money arising on the said transactions had been paid to trustees of that Settlement.

In witness, &c. (*Add Schedule setting out the documents and facts relating to the Compound Settlement.*)

No. XVIII.

TRUST INSTRUMENT (*Settlement*) *on* MARRIAGE, *of* PERPETUAL RENTCHARGES *belonging to* WIFE *in Reversion, giving the* HUSBAND *and* WIFE *successive* LIFE INTERESTS, *with* REMAINDER *among the* ISSUE *as* PARENTS *or* SURVIVOR APPOINT, *and in default to* CHILDREN *as* TENANTS IN TAIL, *with* CROSS REMAINDERS *in* TAIL ;(*d*) COVENANT *to* SETTLE AFTER-ACQUIRED PROPERTY *to be held on the trusts of the* SETTLEMENT ; POWER *to make a* SETTLEMENT *on a* FUTURE MARRIAGE ; COVENANTS *by* PARENTS *to* PAY *an* ANNUITY. (*Equitable Interests.*)

Parties.

THIS TRUST INSTRUMENT is made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. D.,

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Notice.

Release of part of security for a rentcharge.

(*c*) Notice of this deed must be given to S. L. Act trustees of the Compound Settlement in view of the charge on capital money. This charge removes any question which might arise under L. P. Act, 1925, s. 71, for the charge binds the rights of the persons interested in the land remaining unreleased who do not concur in or confirm the release.

(*d*) The transaction effected by this Precedent would generally be better carried out by a conveyance on trust for sale and a settlement of the net of, &c., Spinster (hereinafter called the Wife), daughter of E. D., of, &c., of the 2nd part, the said E. D. and F. D., his wife (hereinafter respectively called the Father and Mother), of the 3rd part, and W., of, &c., X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called the Trustees), of the 4th part: WHEREAS:—

Intended marriage.

(1) *Agreement for marriage—Form No.* 1, *p.* 246:

Settlement on marriage of parents.

(2) Under a Deed (hereinafter called the Settlement of ——) dated, &c., and made, &c. (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the Father and Mother), and by virtue of a Vesting Deed dated, &c. (being a Vesting Deed made in favour of the Father for giving effect to the requirements of the Settled Land Act, 1925), and under a Deed of Appointment bearing even date with but executed before this Trust Instrument, under the hands and seals of the Father and Mother (being an appointment executed under a power contained in the Settlement of ——), the perpetual yearly rentcharges mentioned in the Schedule hereto are now vested in the Father in fee simple, UPON TRUST for himself, during his life without impeachment of waste, with remainder, UPON TRUST for the Mother during her life without impeachment of waste, with remainder (provided the now intended marriage shall be solemnised within six months from the date of the said

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Trust for sale usual when children take equally.

proceeds, see Forms and Precedents of Settlements (Personal). This remark applies generally unless the first and other sons are to take successively.

Notices.

It saves costs if the trustees of the head settlement will agree to act as trustees of the derivative settlement. Unless they are parties, notice in writing must be given to the S. L. Act trustees of the head settlement of the execution of the appointment and of the trust instrument: L. P. Act, 1925, s. 137.

Effect of settling an interest in remainder.

This Precedent is given as an illustration of the different methods required when real estate is to be settled on limitations corresponding as nearly as possible with trusts usually employed in a personalty settlement, and also as an illustration of a settlement of an interest in remainder. It does not come on to the title to the real estate. An estate in remainder is an equitable interest: L. P. Act, 1925, s. 1. After the death of the survivor of the father and mother the special personal representatives of the survivor will execute a vesting assent in favour of the tenant for life under this new settlement and will nominate the persons who are then the S. L. Act trustees thereof as the S. L. Act trustees. No deed of discharge will be required under S. L. Act, 1925, s. 17, for there will be a chain of settlements, though such a deed would be executed if a tenant for life surrendered. A settlement does not usually come to an end during the lifetime of a tenant for life.

Effect of conveying an interest in remainder on trust for sale.

If the settlement had been effected by means of a trust for sale, then the special personal representatives of the survivor of the father and mother would have assented to the property vesting in the trustees for sale on trust for sale, and the conveyance of the interest in remainder would not come on the title.

Appointment), UPON TRUST for the Wife, in fee simple; And the Trustees [—— and ——] are the present trustees of the Settlement of ——, for the purposes of the Settled Land Act, 1925:

Agreement for Settlement.

(3) *Agreement for Settlement—Form No.* 2, p. 246:

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

Declaration of trust.

1. (1) THE Wife, as Settlor, with the concurrence of the Husband, hereby declares that (subject to the respective life interests of the Father and Mother), she will stand possessed of:

Parcels.

ALL AND SINGULAR the perpetual yearly rentcharges or fee farm rents mentioned in the Schedule hereto, together with all powers and remedies for recovering and compelling payment of the same,(*e*) and with the benefit of the covenants and provisions respectively contained in the Deeds of Grant mentioned in that Schedule:

UPON TRUST for the Wife, in fee simple, until the solemnisation of the said intended marriage, and thereafter, Upon the trusts hereinafter mentioned, and so that all interests for life shall be without impeachment of waste:

Vesting instrument to be made.

(2) IF and when the premises fall into possession, the requisite Vesting Instrument shall, at the cost of the trust premises, be made by the personal representatives or other estate owner thereof in favour of the tenant for life or (if no life interest be subsisting) trustees for sale or other persons entitled thereto under the trusts hereof.

Trusts after marriage.

2. SUBJECT to the respective life interests of the Father and Mother, the premises shall, after the solemnisation of the said intended marriage be held Upon the trusts and subject to the powers and provisions following (that is to say)—

Successive life interests for Wife and Husband.

(1) UPON TRUST for the Wife during her life (*ee*) without power of anticipation during any coverture, With remainder,

(2) UPON TRUST for the Husband during his life, With remainder,

Remainder to issue as Husband and Wife or survivor shall appoint.

(3) IN TRUST for all or such one or more exclusively of the others or other of the issue of the said intended marriage (whether

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Rule as to perpetuities.

(*e*) Powers and remedies corresponding with the powers and remedies conferred by L. P. Act, 1925, s. 121, are not too remote: *ib.*, sub-s. (6).

Jointure charged on rentcharges.

(*ee*) If a rentcharge for life is charged on perpetual rents, this is a valid limitation: *ib.*, s. 122; this section gives the remedies for recovery as against the rents charged.

children or remoter issue), at such time, and if more than one, in such shares, for such interests and charged with such annual or principal sums (whether secured by a term or not) in favour of any one or more of such issue, and with such provisions for maintenance, advancement and otherwise, at the discretion of any person, and subject to such trusts for sale, powers of management, conditions, restrictions, limitations and remainders over, and generally in such manner for the benefit of such issue or some or one of them as the Husband and Wife shall by deed, revocable or irrevocable, from time to time or at any time jointly appoint; And in default of and subject to any such appointment, then as the survivor of them shall by deed, revocable or irrevocable, or by Will or codicil appoint, but so that under any appointment a child shall not otherwise than by way of advancement take a vested interest in any principal sum except upon attaining the age of twenty-one years, or upon marriage, and that no interest in the said property greater than an estate tail be appointed to any infant, And in default of and until and subject to any such appointment:

In default to children as tenants in common in tail, with cross-remainders.

(4) Upon trust (subject to any trust for sale implied by statute) for all the children of the said intended marriage in equal shares as tenants in common in tail general, with cross remainders between them as to accruing as well as original shares in tail general, and if there shall be but one such child, then as to the entirety Upon trust for such child in tail general, With remainder:

Remainder as Wife shall appoint.

(5) Upon such trusts and for such purposes generally as the Wife shall, while not under coverture by deed revocable or irrevocable, or shall, whether covert or sole, by Will or codicil, appoint, And in default of and until and subject to any such appointment:

In default to Wife, if the survivor in fee simple, and if not, to person who shall then be her heir.

(6) Upon trust (if the Wife survives the Husband) for the Wife in fee simple without power to anticipate her expectant interest, but if she dies in the lifetime of the Husband, then Upon trust in fee simple for the person or persons who, at the time when all the limitations hereinbefore contained shall have determined or become incapable of taking effect, shall answer the description of the right heir or right heirs (*f*) of the Wife,

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Heirs taking by purchase. Trusts for sale implied by statute.

(*f*) As to heirs taking real or personal property by purchase: L. P. Act, 1925, ss. 131, 132; 1 Wolst. & Cherry, 11th ed., 353–5; Ad. of E. Act, 1925, s. 51 (1).

If the limitation to the children as tenants in common in tail takes effect such persons, if more than one, to take (subject to any trust for sale implied by statute) in the like shares as they would have taken under the general law in force before 1926 and applicable to freeholds on a devolution by descent from her:

[Hotchpot provision.(g)]

[(7) (i) PROVIDED that (subject to any appointment to the contrary) no child of the said intended marriage who or whose issue by appointment takes any interest in the premises hereby settled shall be entitled to take any interest in the premises devolving in default of appointment without bringing into hotchpot to the satisfaction of the Trustees the value of the interest so appointed;

(ii) If the Trustees shall in writing certify that in their opinion default has been made in bringing such value into hotchpot, then any interest to which such child would have been entitled in default of appointment shall go and be held (subject to any trust for sale implied by statute) IN TRUST for the other children of the said marriage in equal shares in tail, with cross remainders between them as to accruing as well as original shares in tail: And if there shall be only one such other child, then IN TRUST for that child in tail;

(iii) This provision shall not apply for the benefit of any person, not being one of the issue of the now intended marriage, entitled on the failure or determination of the foregoing limitations for the benefit of the issue of the said marriage.]

Power for Wife to surrender life interest to child.

3. NOTWITHSTANDING the restraint on anticipation hereinbefore imposed, the Wife may surrender her life interest in the

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in favour of more than one person, a trust for sale will be implied under S. L. Act, 1925, s. 36. The former S. L. Act trustees will be the trustees for sale: *ib.* They will have the same overriding powers as the former tenant for life: *ib.*, sub-s. (2), see also L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3), as amended by L. P. (Amend.) Act, 1926, Sch. They will also have any additional powers which were conferred on a tenant for life: L. P. Act, 1925, s. 28 (1), as amended by L. P. (Amend.) Act, 1926, Sch.

Overreaching powers of trustees for sale.

If two or more heirs take by purchase in undivided shares, the above remarks apply. If the land becomes vested in two or more joint tenants beneficially (not being tenants for life) a trust for sale is implied under L. P. Act, 1925, s. 36; that does not prevent the survivor who is solely and beneficially entitled from dealing with the land as if there were no trust for sale: L. P. (Amend.) Act, 1926, Sch., amending s. 36, though a doubt on this point could not be justified.

Beneficiaries to be consulted, when?

Where the trust for sale is implied by statute, the trustees for sale must consult the beneficiaries in accordance with L. P. Act, 1925, s. 26 (3) as re-enacted in L. P. (Amend.) Act, 1926, Sch.

(g) In this case the hotchpot provision is necessarily complicated; hence is generally omitted. The matter has then to be attended to when any appointment is made.

vested share or interest of any child or other issue of the said intended marriage for the purposes of the advancement or benefit of such child or other issue or so as to bring such share or interest into possession.

Appointment of S. L. Act trustees.

4. THE Trustees shall be the trustees hereof for the purposes of the Settled Land Act, 1925, and shall be entitled to act for those purposes after the determination or cesser of the respective life interests of the Father and Mother.(*h*)

Additional powers relating to capital money.

5. *Form No.* 43, *p.* 290 (*introduction*):

(1) *Form No.* 44, *p.* 290 (*interim investments*):

(2) *Form No.* 51, *p.* 295 (*notices*).

Additional powers relating to the settled land.

6. *Form No.* 52, *p.* 295 (*introduction*):

(1) *Form No.* 56, *p.* 296 (*raising of capital money*):

(2) *Form No.* 58, *p.* 297 (*transactions generally*):

(3) *Form No.* 59, *p.* 297 (*powers of attorney*).

[Provision in case property is disposed of before it falls into possession.]

[7. IF by reason of the exercise of the statutory powers conferred on the tenant for life for the time being under the Settlement of ——, or of the other powers therein contained, the whole or any part of the premises hereby settled shall have been disposed of before the same fall into possession, and any difficulty arises in ascertaining what property represents the premises so disposed of, the Trustees may arrange with the trustees for the time being of the Settlement of —— as to what property shall be deemed to be subject to the limitations hereof, and may condone any breach of trust which may have been committed by the trustees of the Settlement of ——, and any such arrangement and condonation shall be binding on all persons interested hereunder.(*i*)]

Agreement for settling after-acquired property.

8. (1) THE Wife hereby covenants with the Trustees (*j*) that if she shall at any time after the now intended marriage and during the same coverture become entitled in any manner and for any estate or interest to any real or personal property exceeding in value £500 at one time, and from one and the same source (except gifts from the Husband of any description and

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(*h*) It will save costs if the trustees of the head settlement are appointed to act for the purposes of the derivative settlement.

(*i*) If the trustees of the head settlement and of the derivative settlement are the same persons, this clause will be omitted. The trustees have similar powers under T. Act, 1925, s. 22, in regard to capital money and things in action.

Covenant with each.

(*j*) This is also construed as a covenant with each of the trustees: L. P. Act, 1925, s. 81.

except jewels, trinkets, ornaments, furniture, plate, china, glass, pictures, prints, books and other chattels passing by delivery and not being securities for money, and except also property as to which an express contrary direction is contained in the instrument under which it is acquired, which excepted properties, and also any property excepted from this covenant as not exceeding in value £500, it is hereby agreed shall belong to her absolutely), then and in every such case she and all other necessary parties will at the cost of the trust estate, as soon as may be and to the satisfaction of the Trustees, declare by a Vesting Deed that any legal estate in land affected by this covenant is held by her Upon the trusts and subject to the powers and provisions upon and subject to which the premises hereby settled would be held if the same had fallen into possession, and will transfer or convey any property (not being a legal estate in land) to the Trustees to be held Upon the trusts and subject to the powers and provisions upon and subject to which capital money arising from the freehold property hereby settled or investments representing the same would be held if the premises hereby settled had fallen into possession.

Provided as follows—

(i) Any annuity or the income of any other real or personal property limited to or held in trust for the Wife for her life only, or for any term of years determinable by notice after her death, is to be treated as income, and until sale thereof (if any) is to be paid to her without power of anticipation during any coverture;

(ii) All property (not being a legal estate in land) vested in the Trustees pursuant to this covenant shall be held by them upon trust to sell or convert the same with such consents as are, by the Settled Land Act, 1925, made requisite to dealings with capital money and with power to postpone any such sale or conversion, and so that no reversionary interest be sold unless there is special reason for the sale, and until sale all income attributable to the premises shall, however invested, be treated and applied as income;

(iii) If the Wife becomes entitled to an equitable interest in land, and subsequently acquires a legal estate therein, she shall retain such legal estate and execute a Vesting Deed in respect thereof in manner hereinbefore mentioned, and the trust for sale shall not apply to the land;

(iv) For the purposes of this clause "land," "legal estate" and "equitable interest" have the same meanings as in the Law of Property Act, 1925 (as amended).(jj)

Indemnity to Trustees.

(2) The Trustees shall not be made accountable in respect of any real or personal property becoming subject to this clause unless and until the same shall have been expressly made subject to the trusts hereof or have been assigned, paid or transferred to the trustees Upon the trusts aforesaid, nor shall they be chargeable with breach of trust or made liable in any way for not taking any proceedings to get in the same real and personal property, or any part thereof, unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested hereunder, and unless also due provision be made to the satisfaction of the Trustees for payment of the costs of any proceedings required to be taken.

Power to make Settlement on future marriage.

9. (1) If the Wife survives the Husband and marries again, and at the date of such remarriage there shall be in existence only one child of the now intended marriage, then, without prejudice to any appointment which may have already been made under the powers hereinbefore contained, she may either in contemplation of or after any subsequent marriage from time to time by deed, revocable or irrevocable, or by Will or Codicil—

(i) Revoke the trusts, powers and provisions hereinbefore declared concerning any part of the premises for the time being subject to the limitations hereof (not exceeding together one-half of the value thereof) such value to be ascertained by the Trustees and certified by them at the date of the appointment or at the death of the Wife as the case may require (and so that the Trustees may appropriate any property to answer any appointment made under this present power);

(ii) And may appoint that the part or parts to which such revocation extends shall, after her death, remain and be held, Upon such trusts and subject to such powers (including any powers corresponding with any power herein contained) and provisions, and generally in such manner for the benefit of any husband who may survive her or any child, children or other issue of such subsequent marriage as the Wife may think proper:

Provided that, subject to the trusts, powers and provisions so appointed, the part or parts of the premises to which such revocation and appointment relates, or so much thereof respectively as shall not have become vested or been appointed under

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Power of entry.

(jj) See L. P. Act, 1925, s. 7 (1), as amended by L. P. (Amend.) Act, 1926, Sch., showing that a fee simple subject to a power of entry is a "legal estate."

any of such trusts, powers or provisions, shall devolve hereunder in the same manner as if no revocation or appointment had been made under this present power:

Future husband not to take more than life interest.

(2) PROVIDED that under an exercise of the power aforesaid any husband who may survive the Wife shall not take more than a life interest, and that any child of the Wife shall not (except by way of advancement), become entitled to any principal sum charged on the premises unless such child attains the age of twenty-one years or, being female, marries under that age, and that no interest in the premises greater than an estate tail shall be appointed to an infant:

Power exercisable on every marriage and to authorise a charge.

(3) The power last aforesaid may be exercised as often as the Wife shall marry and shall authorise the creation of a charge on the whole or any part of the premises hereby settled (whether secured by a term or not), so that the total part or parts of the premises or any charge thereon ultimately appointed under all revocations and appointments made pursuant thereto shall not exceed in value one-half of the value of the premises hereby settled.

Covenants by parents of intended wife to pay annual sum.(*k*)

10. (1) THE Father and Mother hereby jointly and severally covenant with the Trustees, and also as a separate covenant with the Wife, that if the said intended marriage shall be solemnised within six months from the date hereof the Father and Mother will, during so much of their joint lives or of the life of the survivor of them as the Wife or any of the issue of the now intended marriage shall be living, pay to the Trustees the annual sum of £——, such annual sum to commence from the solemnisation of the said intended marriage, and to be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the expiration of six months from the solemnisation of the said intended marriage:

Trusts.

(2) THE Trustees shall pay and apply the said annual sum of £—— to the person or persons and in the manner to whom and

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Covenant by married woman.

Life interests should, when practicable, be surrendered in place of a covenant to pay.

(*k*) Whether the covenant by the mother will be of any value will depend on whether she has any separate property in regard to which she is not restrained: M. W. P. Act, 1893, s. 1. If she is not restrained as respects her life interest in the perpetual rentcharges, the father and mother should surrender their life interests in a sufficient part, and thus avoid duty, instead of covenanting to pay an annual sum. To avoid estate duty they must, after a voluntary disposition, live three years: Fin. (1909-10) Act, 1910, s. 59. If the life interests are surrendered then a vesting deed must be executed by the estate owner (the mother) in favour of the wife, pursuant to S. L. Act, 1925, s. 7, see next Precedent.

in which the rents and annual income of the premises hereby settled shall be payable or applicable, or would be payable or applicable in case the same had fallen into possession:

Power to surrender life interest in satisfaction of annuity.

(3) PROVIDED that if the Father survives the Mother and surrenders his life interest in so much of the premises hereby settled as may, in the opinion of the Trustees, be sufficient by means of the income thereof to provide for the payment of the said annual sum, then, upon the property affected by the surrender being made subject to the trusts hereof by a vesting deed or otherwise, as the case requires, the said annual sum shall cease to be payable:

Trustees' indemnity.(*l*)

(4) IT shall not be obligatory on the Trustees to enforce the foregoing joint and several covenants, unless when required so to do in any specific case by writing signed by some person or the guardian of some person beneficially interested, and unless also due provision be made to the satisfaction of the Trustees for the payment of the costs of any proceedings required to be taken, and any omission by the Trustees to enforce the said covenant (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust.

11. *Power for professional trustees to charge—Form No.* 63, *p.* 299.

Power to appoint new trustees.

12. THE Husband and Wife, during their joint lives, and the survivor of them during his or her life, shall have power from time to time to appoint a new trustee or new trustees hereof [but during the subsistence of the trusts of the Settlement of —— the same persons who are for the time being the trustees thereof shall, so far as possible, be appointed to be the trustees hereof].

IN WITNESS, &c.

THE SCHEDULE.

Particulars of perpetual rentcharges affected by this Settlement.(*m*)

Yearly Rent-charge.	Short Particulars of Land charged.	Date of Grant.	Parties to Deed of Grant.
£ s. d.			

(*l*) As the wife is restrained from anticipation, the trustees should be protected in this way.

Legal estates.

(*m*) These rentcharges subsist as legal estates, so also rentcharges for a term of years absolute, *e.g.*, compensation rentcharges arising on the extinguishment

No. XIX.

VESTING DEED *pursuant to S. L. Act,* 1925, *s.* 7, *and* PARTIAL DISCHARGE *under s.* 17, *where the property has been appointed to the* WIFE ABSOLUTELY, *the preceding life interests having been* SURRENDERED *at the same time, and the* WIFE *settles the property on her marriage.* (*Legal Estate.*)

Parties.

THIS VESTING DEED is made (*date*), BETWEEN F. D. (hereinafter called the Mother), the wife of E. D., of, &c. (hereinafter called the Father), of the 1st part, [R. T., of, &c., and S. T., of, &c. (hereinafter called the Principal Trustees),(*n*) of the 2nd part], A. B., of, &c. (hereinafter called the Husband), of the 3rd part, C. D., Spinster (hereinafter called the Wife), a daughter of the Father and Mother, of the 4th part, and W., of, &c., and X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called the Trustees), of the 5th part: WHEREAS :—

(1) *Intended marriage—Form No.* 1, *p.* 246.

Vesting Deed showing that the property is held in trust for the Wife.

(2) Under a Deed (hereinafter called the Vesting Deed) dated, &c., and made between the Principal Trustees of the one part, and the Mother of the other part (being a deed made pursuant to the Settled Land Act, 1925, in favour of the Mother relating to the perpetual rentcharges mentioned in the Schedule hereto and to other property, wherein the Principal Trustees were named as the trustees of the settlement therein referred to for the purposes of the Settled Land Act, 1925) and in the events which have happened (*o*) the perpetual yearly rentcharges mentioned in the Schedule hereto are now vested in the Mother in fee simple IN TRUST for the Wife in fee simple discharged from all the limitations, powers and provisions of the settlement referred to in the Vesting Deed; and accordingly the Principal

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of manorial incidents, can take effect as legal estates: L. P. Act, 1925, s. 1. The fee simple in the land affected by a right of entry given for the protection of a rentcharge remains a legal estate: *ib.*, s. 7 (1), as amended by L. P. (Amend.) Act, 1926, Sch.

(*n*) If the S. L. Act trustees of the head settlement are also to act as the trustees of the new settlement, then references to the "Principal Trustees" will be struck out and "the Trustees" only will be mentioned in the deed.

(*o*) The appointment to the daughter, and the surrender of the life interests should not be mentioned, these only relate to the equitable interests, the discharge of the principal trustees shows that the settlement has determined. Care must be taken that the vesting deed is executed as an escrow to be delivered on the solemnisation of the marriage.

Escrow.

Trustees have, at the request of the Mother, agreed to execute such discharge as is hereinafter contained:

(3) *Agreement to settle—Form No.* 2, *p.* 246.

NOW, in pursuance of the said agreement and in consideration of the said intended marriage, THIS DEED WITNESSETH as follows:—

Partial discharge.

1. PURSUANT to section seventeen of the Settled Land Act, 1925, the Principal Trustees hereby declare that they are discharged from the trust created by the settlement referred to in the Vesting Deed, but so far only as regards the perpetual yearly rentcharges mentioned in the Schedule hereto.

Conveyance to Wife.

2. THE Mother, As Settlor, hereby conveys unto the Wife:

ALL AND SINGULAR the perpetual yearly rentcharges (*parcels as in last Precedent referring to Schedule hereto*),

TO HOLD unto the Wife in fee simple upon the trusts hereinafter mentioned.

Declaration of trust.

3. THE Wife shall stand possessed of the premises Upon the trusts declared concerning the same by a Trust Instrument (*p*) bearing even date and executed contemporaneously herewith and made between the Wife of the 1st part, the Husband of the 2nd part and the Trustees of the 3rd part, or upon such other trusts as the same ought to be held from time to time.

S. L. Act trustees.

4. THE Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

5. THE following additional or larger powers are conferred by the said Trust Instrument in relation to the settled land and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life namely:—

(1) *Form No.* 56, *p.* 296 (*raising of capital money*):

(2) *Form No.* 58, *p.* 297 (*transactions generally*):

(3) *Form No.* 59, *p.* 297 (*powers of attorney*).

New trustees.

6. THE power of appointing a new trustee or new trustees of the Settlement is vested in the Husband and Wife during their joint lives and in the survivor of them during his or her life.

Acknowledgment.

7. THE Mother hereby acknowledges the right of the Wife to production of the Vesting Deed and to delivery of copies thereof.

IN WITNESS, &c.(*q*)

(*p*) This will not be quite in the same form as the last Precedent, as that related to an estate in remainder, but it can be adapted on the lines of Prec. IIID, p. 317.

Statements and particulars in vesting instruments by reference, when authorised.

(*q*) Statements and particulars (including parcels) in vesting instruments may be incorporated by reference to an existing vesting instrument, and where

THE SCHEDULE.

Particulars of the perpetual yearly rentcharges hereby conveyed.

Yearly Rentcharge.	Property Charged.	Date of Grant.	Parties to Grant.

No. XX.

SUPPLEMENTAL VESTING DEED *for bringing the* PRINCIPAL VESTING DEED *up to* DATE, *during the lifetime of the* TENANT *for* LIFE, *where* ADDITIONAL *powers have been conferred by a* RE-SETTLEMENT *or* POWERS DEED *and other dealings have taken place since the execution of the* PRINCIPAL DEED.(r) (*Legal Estate.*)

Parties.

Supplemental to principal and subsidiary vesting instruments.

THIS VESTING DEED is made (*date*), BETWEEN T. L., of, &c. (hereinafter called the Estate Owner), of the one part, and X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called the Trustees), of the other part, supplemental to the Principal Vesting Deed (hereinafter called the Principal Deed) and to the Subsidiary Vesting Deeds mentioned in the —— Schedule hereto (hereinafter

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a settlement is subsisting on 1st January, 1926, by reference to that settlement and any conveyance to the uses thereof, but, with that exception, not by reference to a disentailing deed or to a trust instrument: S. L. Act, 1925, s. 5 (2).

Simplicity of deeds relating to the legal estate.

It will be seen from the foregoing Precedents that a new vesting deed is *not* required where land is re-settled, and there is no consequential change in the legal ownership, and that all the documents relating to legal estates are of a simple character; in fact, they are based as far as possible on the idea of a simple transfer of stocks or shares.

(r) From some aspects this deed must be regarded as a luxury; in the normal case the facts stated in a vesting instrument are not brought up to date till there is a change in the legal ownership (*e.g.*, by reason of the death of a tenant for life or the surrender of his life interest). But by setting out the new additional powers it complies with the letter of S. L. Act, 1925, s. 18, and there can be no question that it facilitates the making of title and general estate management. It will not usually be made unless some important transaction depending on a new additional power (see *Re Cowley's S. E.* (1926), W. N. 202) is contemplated. In all vesting instruments, the tenant for life is directed to hold the property on the trusts affecting it from time to time, but, independently of any express trust, he holds it on the trusts declared by S. L. Act, 1925, s. 16 (1) (i), all that is essential is that he should have notice of the trusts on which the land is to be held.

Giving effect to equitable interests and powers according to priorities.

with the Principal Deed collectively called the Scheduled Deeds): WHEREAS:—

(1) By the Principal Deed the Estate Owner agreed to hold the properties therein described on the trusts of the Settlement therein referred to: Original declaration of trust.

(2) As appears from the endorsements on the Principal Deed, the Trustees are the present trustees of the Settlement for the purposes of the Settled Land Act, 1925: Changes among the Trustees.

(3) The Settlement affecting the properties remaining subject to the Scheduled Deeds now consists of the documents mentioned in the —— Schedule hereto, or any two or more of them (hereinafter collectively referred to as the Compound Settlement), and as appears from the [Re-settlement] [Powers Deed] mentioned in that Schedule certain additional or larger powers relating to the settled land have been conferred in excess of those mentioned in the Principal Deed: Variation of the settlement.

(4) Certain sales and exchanges of parts of the lands comprised in the Scheduled Deeds or some of them have been completed under the statutory powers, and short particulars of the Conveyances and Deeds of Exchange are contained in the —— Schedule hereto: Sales and exchanges.

(5) Short particulars of the mining [forestry] and building leases affecting the properties remaining subject to the Scheduled Deeds or some parts thereof are contained in the first and second parts of the —— Schedule hereto: Mining and building leases.

(6) Short particulars of the mortgages and legal rentcharges (whether perpetual or held for terms of years absolute) affecting the said properties or parts thereof are contained in the first, second and third parts of the —— Schedule hereto: Legal incumbrances.

(7) All the manorial incidents formerly affecting parts of the said properties have been extinguished by compensation agreements or by notice: Extinguishment of manorial incidents.

(8) The Estate Owner has at the request of the Trustees (*s*) and for the purpose of facilitating future transactions agreed to execute such Vesting Deed as hereinafter appearing: Agreement to execute Vesting Deed.

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

1. THE Estate Owner holds the properties and rights now Declaration of trust.

(*s*) When new trustees are appointed they may well stipulate that a supplemental deed should be executed for clearing up the position, and that notice of the supplemental deed should be endorsed on the principal deed. It is useless to set out the facts relating to the land in the appointment of new trustees. The appointment does not come on the title. Rights of intending trustees.

remaining subject to the Scheduled Deeds, Upon the trusts and subject to the powers and provisions upon and subject to which under the Compound Settlement or otherwise the same ought to be held from time to time.

S. L. Act trustees.

2. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. THE additional or larger powers mentioned in the —— Schedule hereto (including those mentioned in the Principal Deed) are conferred by the Compound Settlement, or by one or more of the documents constituting that Settlement, in relation to the settled land and by virtue of the said Act operate and are exercisable as if thereby conferred on a tenant for life.

New trustees.

4. THE power to appoint a new Trustee or new Trustees of the Settlement is vested in the Estate Owner during his life [*or otherwise as the case requires*].

IN WITNESS, &c. [*Add the requisite Schedules.*]

No. XXI.

POWERS DEED *for conferring* POWERS ADDITIONAL *to those conferred by the S. L. Act*, 1925, *under a joint power of* APPOINTMENT.(*t*) (*Equitable Interests.*)

Parties.

THIS POWERS DEED dated, &c., and made BETWEEN A. B., of, &c., and C. B., of, &c. (hereinafter called the Appointors), of the one part, and X., of, &c., and Y., of, &c., and Z., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:—

Settlement, &c., conferring joint power.

(1) Under the Settlement, Vesting Deeds and other instruments mentioned in the —— Schedule hereto, certain freehold and leasehold properties in or arising in the County of —— are now vested in the said A. B. Upon such trusts and for such purposes generally as the Appointors shall (subject only to the family charges mentioned in the —— Schedule hereto) by deed revocable or irrevocable from time to time appoint, with certain trusts over in default of appointment; And under the instruments aforesaid [and by virtue of divers appointments of new trustees] certain capital money, investments and other personal estate are now vested in the Trustees UPON TRUSTS corresponding to the trusts affecting the said freehold and leasehold

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Legal estates, when affecting

(*t*) Though, in the first instance, this deed relates to equitable interests, the powers affecting the settled land when mentioned in or endorsed on the principal vesting instrument will or may relate to the creation or transfer of legal estates.

properties, the Trustees being the present trustees for the purposes of the Settled Land Act, 1925, of the Settlement aforesaid :

Desire to confer additional powers.

(2) The Appointors in the exercise of the general power of appointment conferred by [the Disentailing Deed] [the Settlement] mentioned in the —— Schedule hereto are desirous of conferring such powers in addition to those conferred by the said Act [as extended by the said Settlement] as are hereinafter referred to :

NOW, in exercise of the powers aforesaid and of all other powers, THIS DEED WITNESSETH as follows :—

Additional powers conferred.

1. The Appointors hereby appoint and direct that the said Settlement shall (without prejudice to the family charges aforesaid) henceforth be read and have effect as if the additional powers set forth in the —— Schedule hereto had been incorporated therein.

Powers relating to the settled land to be mentioned in the vesting deed.

2. Such of the said additional powers as relate to the settled land shall be mentioned in the principal vesting instrument for the time being in force or in a Vesting Instrument supplemental thereto, and in the meantime shall be endorsed on the Principal Vesting Instrument mentioned in the —— Schedule hereto and such endorsement shall be signed by the Trustees.

Family charges having priority to the power of appointment. (u)

3. The said powers shall be exercised so as not to affect prejudicially the family charges mentioned in the —— Schedule hereto, but no purchaser, mortgagee, lessee or other person dealing in good faith for money or money's worth with the estate owner for the time being of the settled land, shall (subject to any order of the Court to the contrary) be concerned to see or enquire whether or not any dealing would affect prejudicially the said charges or any of them or the consent of the persons interested has been obtained to any transaction to be effected thereunder.

In witness, &c. [*Add Schedules. As to the additional powers, see Sect.* VIII, *pp.* 289–98, *supra.*]

Additional powers not to alter beneficial interests.

(u) See *Re Cowley's S. E.* (1926), W. N. 202 ; also S. L. Act, 1925, ss. 16 and 107. If there are any family charges paramount to the power of appointment, care must be taken that the new powers do not authorise the settled property to be dealt with so as to affect the family charges prejudicially. A clear distinction should be drawn between a power authorising a useful transaction to be carried out and a provision which in effect alters the beneficial limitations or trusts.

PART III.

INSTRUMENTS RELATING TO SETTLEMENTS (REAL).

No. I.

NOTICE *by* TENANT *for* LIFE *to the* TRUSTEES *and their* SOLICITORS *of* INTENTION *to make* DISPOSITIONS *of and grant* OPTIONS *in respect of* SETTLED LAND *under the* POWERS *of the* SETTLED LAND ACT, 1925.(*a*) (*Equitable Interests.*)

To C. D., of, &c., E. F., of, &c., and G. H., of, &c., the Trustees for the purposes of the Settled Land Act, 1925, of a Settlement dated, &c., and made, &c. (*state date and parties*) [of a Settlement created by the Will of the late —— dated —— and proved ——] [of a compound Settlement created by the Instruments mentioned

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Notices under S. L. Act.

(*a*) These notices are seldom given where the trustees have to join in the transaction, for their concurrence operates as a waiver. In many cases the settlement dispenses with the notices, but in the case of compound settlements, it is conceived that any provision dispensing with notices should be given in the instrument under which the trustees are constituted, *e.g.*, the instrument first in date or operation, or where the amendment in L. P. (Amend.) Act, 1926, Sch., affecting S. L. Act, 1925, s. 31, applies, in the instrument whereby the life interest is created. Where no trustees are constituted by one of the instruments, but have been appointed by the court, it is conceived that no provision as to notices could well apply as respects such trustees or their successors in office.

The notice must be sent separately to each of the trustees in a registered letter (to be posted at least one month before the transaction is carried out or the contract for the option is made) addressed to his usual or last known place of abode in the United Kingdom, and also to the solicitor of the trustees if known to the tenant for life, addressed to his place of business: S. L. Act, 1925, s. 101.

There must be at least two trustees or a trust corporation to receive the notice, otherwise the notice is void: *ib.*, sub-s. (1). The notice to make a sale, exchange, lease or grant of an option may be general in terms: *ib.*, sub-s. (2). A person dealing in good faith with the tenant for life is not concerned to enquire respecting the notice: *ib.*, sub-s. (5). The tenant for life must furnish reasonable information respecting sales, exchanges or leases effected or in progress or intended, when so required. Notices may be waived: *ib.*, sub-s. (4).

Where a lease at the best rent does not exempt the lessee from punishment for waste, does not impose a fine, and does not create a term in excess of twenty-one years, no notice is required: *ib.*, s. 42 (5); such a lease may be granted, though there are no S. L. Act trustees: *ib.*, see also s. 110 (4).

in the —— Schedule hereto or any two or more of such Instruments (*b*)], And to Messrs. ——, of, &c., the solicitors of the above-named Trustees.

Notice of intention to sell specified lands,

I, A. B., of, &c., being tenant for life under the above-mentioned Settlement, HEREBY GIVE YOU NOTICE that I intend, in exercise of the power for this purpose conferred on me by the said Act, to sell the lands mentioned in the —— Schedule hereto, being part of the lands settled by the said Settlement [*or* to sell all or any of the real estate and chattels real for the time being subject to the limitations of the said Settlement as and when opportunities arise];

[or to sell generally].

or,

To exchange.

to make an exchange of the lands mentioned in the —— Schedule hereto, being part of the lands settled by the said Settlement, for lands belonging to X. Y., of, &c., situated in the said parish [and to raise the money (if any) which may be required for equality of exchange by a charge by way of legal mortgage on all or some of the lands to be received in exchange, and on part of the lands remaining subject to the limitations of the said Settlement];

or,

To grant an option.

to grant an option to purchase the lands mentioned in the —— Schedule hereto, being part of the lands settled by the said Settlement;

or,

To grant options generally.

to grant options to purchase or take any lease of the settled land or any part thereof or any easement, right or privilege over or in respect of the same in accordance with section fifty-one of the said Act, as and when opportunities arise;

or,

To make a lease.

to make a lease of the land [*or* messuage] mentioned in the —— Schedule hereto (being part of the property settled by the said Settlement) for a term of —— years for building purposes;

or,

To make leases generally.

to make building, mining, forestry and other leases of the lands

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Compound settlements; instruments vary.

(*b*) The instruments creating a compound settlement may vary from time to time, thus, if all the charges created by the first instrument have ceased or been discharged, that instrument no longer remains a material part of the settlement. As to the validation of orders appointing trustees of a compound settlement, though all the instruments are not mentioned: *ib.*, s. 33 (2), (3).

and property settled by the said Settlement, or some part or parts thereof as and when opportunities arise ;

or,

To make sales, exchanges, leases, &c., generally.

to make sales, exchanges and leases of and to grant options in respect of the lands and properties settled by the said Settlement, or some part thereof, as and when opportunities arise ;

or,

To raise money for an authorised purpose.(c)

to raise the sum of £—— and the costs of raising the same by charge by way of legal mortgage on the lands mentioned in the —— Schedule hereto (being part of the lands, subject to the limitations of the said Settlement) for the purpose of [*set out the authorised purpose, e.g.,* "discharging the incumbrances mentioned in the —— Schedule hereto and affecting the inheritance of the settled land or part thereof."]

As WITNESS my hand this —— day of ——, 19—.

(*Add Schedules, if required.*)

No. II.

GENERAL WAIVER *of* NOTICE *by* TRUSTEES *under the* SETTLED LAND ACT, 1925, s. 101 (4). (*Equitable Interests.*)

IN the matter of a Settlement dated, &c., and made, &c. (*state date and parties*) [*or otherwise describe the settlement as in Prec.* I). To A. B., of, &c., the tenant for life in possession of the property settled by the above-mentioned Settlement.

WE, C. D., of, &c., E. F., of, &c., and G. H., of, &c., the Trustees of the above-mentioned Settlement for the purposes of the Settled Land Act, 1925, pursuant to the power for this purpose conferred on us by section one hundred and one of the said Act, hereby waive generally the notice by that section required to be given to us and to our solicitors of your intention to make a [sale, exchange, grant of an option or] lease under the powers of that Act [as extended by the said Settlement].(d)

As WITNESS our hands this —— day of ——, 19—.

(c) S. L. Act, 1925, s. 71, sets out the authorised purposes.

(d) The mere receipt of the consideration, if any, would be a sufficient waiver by the trustees.

No. III.

WAIVER *by* TRUSTEES *of* STATUTORY NOTICE *as regards a* PARTICULAR SALE. (*Equitable Interests.*)

IN the matter, &c.
To A. B., &c. } *as in last Precedent.*

WE, C. D., of, &c., E. F., of, &c., and G. H., of, &c., the Trustees of the above-mentioned Settlement for the purposes of the Settled Land Act, 1925, having been informed that you have entered into a contract with X. Y., of, &c., for the sale to him of the property mentioned in the Schedule hereto for the sum of £——, hereby waive the notice of intention to make that sale which, under section one hundred and one of the said Act, you ought to have given to us and to our solicitors.(*e*)

AS WITNESS our hands this —— day of ——, 19—.

THE SCHEDULE.

No. IV.

MEMORANDUM *to be endorsed or written at the end of a* PRINCIPAL VESTING INSTRUMENT *when* ADDITIONAL *or* LARGER POWERS *are conferred by a* RE SETTLEMENT *or* POWERS DEED *in excess of those originally mentioned in the* VESTING INSTRUMENT.(*f*) (*Legal Estate.*)

(*Date*) IN addition to the powers mentioned in [the —— Schedule to] the [within] [above] written Vesting [Deed] [Assent], the following powers conferred [by a Re-settlement] [under the joint power of appointment mentioned in the said Vesting Instrument]

(*e*) See last note.

(*f*) The additional powers conferred by a re-settlement or powers deed are exercisable by the tenant for life who is the estate owner: S. L. Act, 1925, ss. 1 and 108; *Re Cowley's S. E.* (1926), W. N. 202; under *ib.*, s. 18, the additional powers must be mentioned in the vesting instrument, but when no new vesting instrument is required, there being no change in the legal ownership (in every case the estate owner holds "Upon such trusts, &c., as the same ought to be held from time to time") the vesting instrument must be brought up-to-date by endorsement. Powers not existing at the time of execution cannot be mentioned therein in the first instance. To comply strictly with s. 18, it may be expedient to execute a short supplemental Vesting Deed (see Prec. XX, *supra*), setting out the additional powers in force, but it is not worth while doing this till some special power relating to the land falls to be exercised.

Method of noting up vesting instruments.

since the date of the said Vesting Instrument have become exercisable in relation to the settled land, namely :—

(1), (2), &c. (*Set out the powers, see Forms Nos.* 52A *to* 59, *pp.* 295–7.)

(*To be signed by or on behalf of the persons who, by the Vesting Instrument or endorsements thereon, appear to be the S. L. Act Trustees of the Settlement.*)

No. V.

MEMORANDUM *to be endorsed or written at the end of a* PRINCIPAL VESTING INSTRUMENT *when there has been any change among the* S. L. ACT TRUSTEES *of the* SETTLEMENT.(g) (*Legal Estate.*)

(*Date*) BY reason of [the death on the ——, 19—, of the [above] [within] named ——] [the Discharge of ——] [the Appointment of [a] new trustee[s]] the present Trustees of the Settlement referred to in the [within] [above] written Deed, for the purposes of the Settled Land Act, 1925, are (*set out names and addresses of the existing Trustees*).

(*To be signed on behalf of the existing S. L. Act Trustees.*)

No. VI.

MEMORANDUM *to be endorsed or written at the end of a* DOCUMENT *of* TITLE (*relating to the legal estate*) *of* NOTICE *of the last or* PRINCIPAL VESTING INSTRUMENT *pursuant to* S. L. ACT, 1925, s. 98 (3). (*Legal Estate.*)

(*Date*) TAKE NOTICE that the land comprised in the [above] [within] written —— (*describe the nature of document, e.g.,* "Settlement," "Conveyance," "Lease") is affected by a Vesting Instrument dated, &c., and made between, &c.

(*To be signed by or on behalf of the S. L. Act Trustees when the documents are handed over to the tenant for life or when the endorsement is required to be made.*)

(g) See S. L. Act, 1925, ss. 35 and 110; T. Act, 1925, s. 35 (2). This endorsement is in addition to the Deed declaring who are the S. L. Act trustees, as to which see Appointments of New Trustees, *infra*.

No. VII.

SUBSIDIARY VESTING DEED *by* S. L. ACT TRUSTEES *under* L. P. ACT, 1925, s. 31 (4), *of* LAND *comprised in a* MORTGAGE *taken as an* INTERIM INVESTMENT *of* CAPITAL MONEY *where the* RIGHT *of* REDEMPTION *has become* BARRED. VARIATIONS *where a* FORECLOSURE ORDER *has been obtained.*(*h*) (*Legal Estate.*)

Parties.

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. T., of, &c., and C. T., of, &c. (hereinafter called the Trustees), of the one part, and E. F., of, &c. (*tenant for life*) (hereinafter called the Estate Owner), of the other part: WHEREAS:—

Principal vesting deed.

(1) Under a Deed (hereinafter called the Principal Vesting Deed) dated, &c., and made, &c., certain freehold property is now held by the Estate Owner on the trusts of a Deed dated, &c., and made, &c. (hereinafter called the Settlement), And by the Principal Vesting Deed the Trustees were declared to be the Trustees of the Settlement for the purposes of the Settled Land Act, 1925:

Mortgage.

(2) By a Deed (hereinafter called the Mortgage) dated, &c., and made between X. Y., of, &c., of the one part, and the Trustees of the other part, the said X. Y. being then seised in fee simple in possession free from incumbrances of the property hereinafter described, conveyed the same to the use of the Trustees in fee simple by way of mortgage for securing payment to the Trustees on a day therein mentioned and long since passed of the principal sum of £——, with interest thereon as therein mentioned, and which principal sum was advanced by the Trustees by the direction of the Estate Owner out of capital money for the purposes of the Settlement which was then primarily liable to be laid out in the purchase of freehold land to be conveyed to the uses of that Settlement:

Conversion into long term.

(3) The right of redemption not having been barred on the 1st January, 1926, the said property became vested by virtue of Part VII of the First Schedule to the Law of Property Act, 1925, in the Trustees for a term of 3,000 years, without impeachment of waste, and subject to cesser on redemption under the Mortgage:

Reservation of easement.

(*h*) See also as to subsidiary vesting deeds: S. L. Act, 1925, s. 10, and 1st Sch., Form No. 4. In some cases where important easements are created *de novo* by a reservation and a duplicate of a conveyance is taken, a subsidiary vesting deed is used, but it is not essential.

[Mortgage debt not paid and Trustees acquired absolute title by adverse possession.

[(4) No part of the said Mortgage debt having been paid, the Trustees entered into possession of the said property in the year ——, and have ever since remained in uninterrupted possession thereof without ever having acknowledged the right of the said X. Y. or any other person to any right of redemption, and the Trustees accordingly became absolutely entitled to the said property discharged from all right of redemption previously existing therein :

Enlargement deed.]

(5) By an Enlargement Deed dated, &c., under the hands and seals of the Trustees, they, pursuant to sections eighty-eight and one hundred and fifty-three of the said Act, declared that the said term was enlarged into a fee simple, discharged from any legal mortgage defeated by the title so acquired, and that the fee simple was vested in them discharged as aforesaid :]

[Variation where foreclosure order has been obtained.]

[(4) By an Order of the Chancery Division of the High Court of Justice made on the —— day of ——, in a foreclosure action (19— T. No. —) in which the Trustees were Plaintiffs and the said X. Y. Defendant, the usual accounts were directed to be taken and it was ordered that if the said X. Y. should not on the day therein mentioned pay to the Trustees what should be certified to be due to them on taking such account, then the said X. Y. should thenceforth stand absolutely debarred and foreclosed from all right of redemption in the said property :]

[Master's certificate.]

[(5) The Master duly made his certificate dated the —— day of ——, and thereby certified that there was due from the said X. Y. to the Trustees the aggregate sum of £—— :]

[That Mortgagor made default.]

[(6) The said X. Y. made default in paying the said sum of £—— to the Trustees and on the —— day of —— the said Order was made absolute, and accordingly, by virtue of sub-section (2) of section eighty-eight of the said Act, the fee simple in the said property became vested in the Trustees, discharged from all right of redemption previously existing therein under the Mortgage :]

Request by tenant for life.

(6) *or* (7) The estate owner has, pursuant to sub-section (4) of section twenty-one of the said Act, requested the Trustees, in lieu of selling the property hereinafter described, to execute such subsidiary Vesting Deed as hereinafter appearing :

NOW, in consideration of the premises, THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Trustees, As Trustees, hereby convey Unto the Estate Owner :

ALL THOSE, &c. (*Parcels by reference to Schedule and plan.*)

To hold unto the Estate Owner, in fee simple, Upon and subject to the same trusts and powers as are declared by the Principal Vesting Deed, by reference as aforesaid, with respect to the freehold property therein mentioned or comprised.

S. L. Act trustees.

2. The Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. The additional powers mentioned in the Principal Vesting Deed are applicable to the property hereby conveyed [and the following further powers have, since the date thereof, been conferred [by a Resettlement] [by a Powers Deed under the overriding power of appointment mentioned in that Vesting Deed] in relation to the settled land, namely (*set out these powers, if any*)].

New trustees.

4. The power of appointing a new trustee or new trustees of the Settlement is vested in the Estate Owner during his life.

In witness, &c. (*Add Schedule of the property.*)

PART IV.

DISENTAILING ASSURANCES.

PRELIMINARY NOTE.

Old powers of tenant in tail in possession or remainder.

BEFORE 1926 a tenant in tail in possession of freeholds might, under the F. & R. Act, 1833, s. 15, dispose of the fee simple or any less estate by a deed enrolled in the Central Office (in the case of copyholds on the court rolls); but if the estate tail was preceded by an estate for years determinable on the dropping of a life or lives, or any greater estate (not being a term of years), created by the same settlement, the tenant in tail, unless he was also tenant in fee simple in remainder expectant on his own estate tail, could not, without the consent of the person called by the Act "the protector of the settlement" (ss. 22, 34), create any larger estate than a base fee, *i.e.*, an estate which would be a complete bar to his issue, but not to those in remainder or reversion, and during the continuance of such issue would devolve or be disposable by him as a fee simple.

Lunatic.

The estate tail of a lunatic could not be sold under the Lunacy Act, 1890, s. 120 (a), but his power to bar the entail was a power vested in him for his own benefit within s. 120, and might be exercised by his committee or receiver, with the leave of the court: *Re E. D. S.* [1914], 1 Ch. 618; 83 L. J. Ch. 505. As to re-settling a lunatic's estate: L. P. Act, 1925, s. 171 (2).

New law.

After 1925, the old law, above stated, applies subject to the following modifications:—

Enrolment.

(1) No disentailing assurance, &c., need be enrolled: L. P. Act, 1925, s. 133.

Property generally.

(2) Entailed interests, taking effect only as equitable interests, can be created in all property, real or personal: *ib.*, s. 131.

Equitable interests.

Not capable of transferring a legal estate.

Operation of powers conferred.

(3) Disentailing assurances can only operate to transfer equitable interests: S. L. Act, 1925, ss. 13 and 18, for a tenant in tail in possession is in the position of a tenant for life: *ib.*, s. 20 (1) (i), while a tenant in tail in remainder can only have an equitable interest: L. P. Act, 1925, s. 1. Thus, disentailing assurances are removed from the category of purchase deeds capable of creating or transferring a legal estate and are placed behind the curtain; indeed, they may form part of a compound settlement (trust instruments), and must not be referred to in vesting instruments: S. L. Act, 1925, s. 5 (2), save as part of a settlement subsisting on 1st January, 1926. All powers of appointment created thereby can only operate to transfer or create equitable interests: L. P. Act, 1925, s. 1; but additional or larger powers can be thereby conferred which will be mentioned in the principal vesting instrument, and, when so mentioned, can be exercised in relation to the creation of legal estates: S. L. Act, 1925, s. 18.

Abolition of special protectors.

(4) Special protectors cannot be appointed after 1925: L. P. Act, 1925, 7th Sch., repealing s. 32 of the Act of 1833, as respects settlements coming into operation after 1925.

Repeals.

(5) The other repeals of the obsolete provisions of the Act of 1833 are contained in L. P. (Amend.) Act, 1924, 10th Sch., see 1 Wolst. & Cherry, 11th ed., 122.

Copyholds.

Fee simple conditional.

(6) Copyholds have been enfranchised, leaving the manorial incidents to be extinguished, and any fee simple conditional on birth of issue in a copyhold interest, which has not become absolute (generally arising for want of a custom to entail in a manor), has been converted into an entailed interest: L. P. Act, 1922, 12th Sch. (8) (ii).

General rule as to the person who shall be protector.

The general rule is that the owner of the prior estate is protector: ss. 22–31; *Re Dudson* (1878), 8 Ch. D. 628; *Re Ainslie* (1884), 54 L. J. Ch. 8; the owner of the prior estate means the beneficial owner: *Re Blandy Jenkins* [1917], 1 Ch. 46; 86 L. J. Ch. 76.

Where there is a tenant in tail under a settlement and there is subsisting under the *same* settlement any estate for years determinable on the dropping of a life or lives, or any greater estate (not being a term of years), prior to the estate tail, then the owner of the prior estate, or the first of such prior estates, if more than one then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being for all the purposes of the Act deemed the prior estate), is the protector of the settlement, and is to be deemed the owner of such prior estate, though the same may have been charged by the owner thereof, or by the settlor, or otherwise howsoever, and though the whole of the rents and profits be required for the payment of the charges thereon, and though such prior estate may have been absolutely disposed of by the owner thereof, or by reason of the bankruptcy or insolvency of such owner, or by any other act or default of such owner. If a tenant for life creates a discretionary trust to subsist during his lifetime this would not deprive him of the protectorship. *Secus* if a tenant in tail, never having been a protector, becomes one of the possible beneficiaries under a discretionary trust, in such a case a life interest should be limited to him and he should by a separate deed assign it to trustees on discretionary trusts. An estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, is to be deemed a prior estate under the same settlement. A husband of a tenant in tail may still, in certain cases, take an equitable interest by the curtesy: L. P. Act, 1925, s. 130. Also co-parceners, as heirs of the body, can still inherit an entailed interest. An estate by way of resulting trust to or for the settlor, is also to be deemed an estate under the same settlement: F. & R. Act, 1833, s. 22. As to the effect of a restoration of a life interest: *ib.*, s. 25.

Discretionary trusts.

Estate by the curtesy.

Parceners.

Restoration of life interest.

As to married woman protector.

Section 24 directs that where a married woman would, if single, be the protector of a settlement in respect of a prior estate which is not thereby settled or agreed or directed to be for her separate use, she and her husband together shall, in respect of such estate, be the protector; but if such prior estate shall, by such settlement, have been settled for her separate use, she alone shall be the protector; see also s. 45. A married woman is alone protector in respect of a life interest which is her separate property under the M. W. P. Act, 1882, see M. W. P. Act, 1907, s. 3; this section applies to disentailing assurances executed after 1882.

Persons excluded from being protectors.

Under s. 27 no woman in respect of her dower and (with a reservation in regard to a bare trustee under a settlement made before 1834) no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such trustee, heir, &c., will be protector, and see *Re Hughes* [1906], 2 Ch. 642; 75 L. J. Ch. 784.

Trustees.

A trustee who has no beneficial interest, whether or not he has duties to perform, is a "bare trustee" within s. 27: *Re Blandy Jenkins* [1917], 1 Ch. 46; 86 L. J. Ch. 76. Thus "statutory owners," when not entitled to any beneficial interest, would not be protectors.

Old power for settlor to appoint a protector.

The settlor might, before 1926, appoint any person or number of persons, not exceeding three, to be protectors in lieu of the person who would have been the protector if there had been no such appointment: s. 32 (now repealed).

Office of protector survived, and, if all

If two or three protectors were appointed, the office passed to the survivors and survivor: *Bell* v. *Holtby* (1873), L. R. 15 Eq. 178; 42 L. J. Ch. 266; notwithstanding the fact that the settlement contained a provision for the appointment of new protectors: *Cohen* v. *Bayley-Worthington* [1908], A. C. 97;

appointed protectors died, tenant for life was protector.

77 L. J. Ch. 373. If all the protectors died, and the settlement contained no power to perpetuate the protectorship, or, there being such a power, it was not exercised, the tenant for life became protector: *Clarke* v. *Chamberlin* (1880), 16 Ch. D. 176.

Lunatic protector.

Where the protector is a lunatic, the Lord Chancellor or other person for the time being entrusted with the care of lunatics is the protector in the place of such lunatic: s. 33; see also *Re Blewitt* (1856), 6 De G. M. & G. 187; 25 L. J. Ch. 393; Lunacy Act, 1890, s. 180.

Consent of protector, how given.

Consent given after death of tenant in tail.

The consent of the protector must be given by the same assurance by which the disposition is effected, or by another deed executed on or before the day on which the assurance is made: s. 42; the protector cannot revoke his consent: s. 44. If the consent is given by a distinct deed, it is no longer necessary to enrol it: L. P. Act, 1925, s. 133. In *Whitmore-Searle* v. *W.-S.* [1907], 2 Ch. 332; 76 L. J. Ch. 576, it was held that the entail was effectually barred where a tenant in tail executed a disentailing assurance and died and the protector subsequently signified his consent by executing the assurance, which was enrolled within six months from the execution by the tenant in tail.

Prohibition void.

The barring of an estate tail cannot be prohibited: *Dawkins* v. *Penrhyn* (1878), 4 A. C. 51; 48 L. J. Ch. 304. The old law as to barring entails in real estate applies to barring entailed interests in personal estate: L. P. Act, 1925, s. 130.

Enlargement of base fee.

Immediate reversion.

Rights of purchaser.

Base fee, &c., in possession.

A tenant in tail who has created a base fee, or an equivalent interest in personal estate, may convert such base fee or interest into a fee simple or absolute interest by deed, so soon as there ceases to be a protector of the settlement: s. 19; or during the protectorship with the protector's consent: L. P. Act, 1925, s. 130. If the owner of a base fee, or an equivalent interest in personal estate, becomes entitled to the immediate reversion in fee simple or to the absolute interest, the estate is enlarged *ipso facto*: s. 39; L. P. Act, 1925, s. 130. The base fee will also be enlarged into a fee simple if on the determination of the prior estates the owner goes into possession and holds for twelve years: R. P. Lim. Act, 1874, s. 6. *Semble*, the same rule applies to an equivalent interest in personal estate, for the statutory provisions relating to estates tail in real property apply to entailed interests in personal property: 1 Wolst. & Cherry, 11th ed., 348–53. A purchaser of a base fee could call upon the vendor to bar the entail when his estate fell into possession if the vendor had covenanted for further assurance: *Bankes* v. *Small* (1887), 36 Ch. D. 716; 56 L. J. Ch. 832, but see *Davis* v. *Tollemache* (1856), 2 Jur. N. S. 1181; Sug., 14th ed., 468. An owner of a base fee in possession is a tenant for life within S. L. Act, 1925, s. 20, and must make title under that Act; the contract will extend to the legal fee simple: L. P. Act, 1925, s. 42 (4). A settlement of a base fee constitutes a trust instrument if and when the interest settled takes effect free from equitable interests under a prior settlement: S. L. Act, 1925, s. 9; when it so "takes effect" a vesting instrument must be made: *ib.* So long as the equitable interests under the prior settlement are subsisting the vesting instrument will extend to the interests comprised in the compound settlement.

"Entailed interest."

The expression "entailed interest" includes estates tail created before 1926: L. P. Act, 1925, s. 130 (7); S. L. Act, 1925, s. 117 (1) (xxviii). This xpression will no doubt come into general use.

Disentailing deed bars all estates to take effect in defeasance of estate tail.

The effect of a disentailing deed is to bar not only the estate tail, but all estates to take effect after the determination or in defeasance of the estate tail: *Milbank* v. *Vane* [1893], 3 Ch. 79; 62 L. J. Ch. 629; *Cardigan* v. *Curzon Howe* [1901], 2 Ch. 479; 70 L. J. Ch. 763.

Where the tenant in tail is a married woman, her husband, under the old law, must concur. Before 1926 the deed had to be acknowledged by her: F. & R. Act, 1833, s. 40; unless she was married or acquired the estate tail after 1882, in either of which cases the husband's concurrence became unnecessary by reason of the M. W. P. Act, 1882; nor had the deed to be acknowledged by her: *Re Drummond and Davie* [1891], 1 Ch. 524; 60 L. J. Ch. 258.

Disentailing deeds by married woman.

The acknowledgment of the married woman might, under the old law, be taken subsequently to the enrolment of the deed, and after the expiration of the six months then limited for enrolment: *Ex parte Taverner* (1855), 1 Jur. N. S. 1194.

Acknowledgment.

After 1925 it is unnecessary for any deed to be acknowledged by a married woman: L. P. Act, 1925, s. 167. Where the court dispenses with the concurrence of the husband, it may declare that the deed shall take effect as if he had concurred. He is not a necessary party if the M. W. P. Act, 1882, applies: 1 Wolst. & Cherry, 11th ed., 424–5.

Declaration of trust.

A declaration of trust is not sufficient to bar an entailed interest: *Green* v. *Paterson* (1886), 32 Ch. D. 95; 56 L. J. Ch. 181.

Dower.

If the tenant in tail was married before 1834, the grantee took subject to any right to dower. No right to dower in respect of an entailed interest is reserved by L. P. Act, 1925, s. 130 (4).

Voidable disposition in favour of a purchaser confirmed by subsequent disposition, but not against purchaser without notice.

If a tenant in tail creates a voidable interest in favour of a purchaser for valuable consideration, and afterwards, under the Act, makes a disposition of the same property, such disposition, whatever its object may be, has the effect of confirming the voidable interest to the extent to which the second deed is an effective disposition, except that if the second disposition is made to a *purchaser* for valuable consideration who has not *express notice* of the voidable interest, then the voidable interest is not confirmed as against such purchaser and the persons claiming under him: s. 38. This section is now confined to equitable interests.

Disposition of property of bankrupt tenant in tail.

Where a tenant in tail of property becomes bankrupt, the trustee appointed in the bankruptcy is empowered to deal with the property in the same manner as the bankrupt might have dealt with it: ss. 56 to 72; and see repeals in L. P. (Amend.) Act, 1924, 10th Sch.

Retrospective effect of enrolment under old law.

The deed, under the old law, had to be enrolled within six months after its execution, and, if so enrolled, operated from the time of its execution, except as against any person claiming for valuable consideration under any subsequent deed duly enrolled before the enrolment of the first deed: s. 74; and see *Cattell* v. *Corrall* (1840), 4 Y. & C. 228; 9 L. J. Ex. Eq. 37. As to the effect, under the old law, of the want of enrolment: *Morgan* v. *M.* (1870), L. R. 10 Eq. 99; 39 L. J. Ch. 493; but where title was made under S. L. Act, 1882, s. 58, enrolment was unnecessary, for a tenant in tail could make title. As to rectification: *Hall-Dare* v. *H.-D.* (1885), 31 Ch. D. 251; 55 L. J. Ch. 154; *Meeking* v. *M.* [1917], 1 Ch. 77; 86 L. J. Ch. 97.

Possession adverse to a tenant in tail runs against all whom he could have barred.

When the right of a tenant in tail to recover property has been barred by the Limitation Acts, all persons claiming any estate, interest, or right which such tenant in tail might lawfully have barred are barred also; and when time has begun to run against a tenant in tail it continues to run after his death against all persons whom he might have barred: R. P. Lim. Act, 1833, ss. 21, 22; *ib.*, 1874, s. 9; *semble*, these enactments now apply to personal property which is entailed: L. P. Act, 1925, s. 130 (1).

When time begins to run against remaindermen where issue only are barred.

If a tenant in tail makes an assurance, which is not effectual to bar the remainders over, and the person claiming by virtue of such assurance enters into possession or receipt of the profits, the remaindermen are barred at the end of twelve years from the time at which such assurance, if it had then been executed by the tenant in tail, would, without the consent of any other person, have operated to bar the remainders: R. P. Lim. Act, 1874, s. 6; *Mills* v. *Capel* (1875), L. R. 20 Eq. 692; 44 L. J. Ch. 674.

But this only applies to assurances which are effectual to bar the issue: *Penny* v. *Allen* (1857), 7 D. M. & G. 409; *Morgan* v. *M.*, *supra.*

Infants.

An order made under the T. Act, 1925, ss. 44, 49, 50 and 53, vesting or appointing a person to convey the estate of an infant tenant in tail in possession bars the entailed interest: *Re Montagu* [1896], 1 Ch. 549; 65 L. J. Ch. 372. Such an order no longer has to be enrolled: L. P. Act, 1925, s. 133 (2).

The court could not, before 1926, direct the execution of a disentailing assurance for effecting a mortgage of the equitable interest of an infant tenant in tail: *Re Hambrough* [1909], 2 Ch. 620; 79 L. J. Ch. 19, but this could, *semble*, be done under T. Act, 1925, s. 53, for the purposes of that section. No legal estate in land will after 1925 be vested in an infant. It will either be vested in personal representatives, or S. L. Act trustees as statutory owners, or in a co-tenant for life of full age, or in trustees for sale, or in a co-mortgagee of full age, or in the Public Trustee.

Capital money in court.

Capital money will not usually be paid out of court to a tenant in tail in possession until he disentails: *Re Reynolds* (1876), 3 Ch. D. 61; but a small sum was paid out in *Stead* v. *Harper* (1896), W. N. 46.

Effect of disentailing assurance where misconception of the estate limited.

Where a tenant for life, who was also contingently entitled to an entailed interest in remainder, disentailed under the impression that he was not tenant for life but tenant in tail in possession, the disentailing assurance operated to bar his entailed interest: *Re Wilmer* [1910], 2 Ch. 111; 79 L. J. Ch. 617.

Stamps.

A disentailing assurance which does not limit any new interest, other than an interest in fee simple in the person barring the entail, is exempt from the additional stamp duties imposed by the Fin. (1909-10) Act, 1910, s. 74. A disentailing assurance by a father and son limiting the property upon such trusts as they appoint and, subject thereto on the existing trusts, is also exempt. References to "uses" in documents before 1926, will be construed as references to "trusts": compare L. P. Act, 1925, s. 1 (9), which refers to directions to convey land to uses; as to savings of equitable interests which were formerly legal estates: *ib.*, 1st Sch., Pt. I; 1 Wolst. and Cherry, 11th ed., 488.

References to "uses"; construction.

Tenant in tail after possibility of issue extinct; statutory entails.

A tenant in tail, after possibility of issue extinct, cannot bar an entail; he is in the same position as a tenant in tail prohibited by statute from barring, both are treated as tenants for life: S. L. Act, 1925, s. 20; save that if the land was purchased by money provided by Parliament for public services the tenant is not treated as a tenant for life, but the statutory powers are exercisable by the statutory owners under *ib.*, s. 23, with his consent when he is of full age and capacity, though a purchaser is not concerned to see that the consent is given. The legal estate vests in the statutory owners under L. P. Act, 1925, 1st Sch., Pt. II, para. 5.

No. I.

DISENTAILING ASSURANCE *by a* TENANT *in* TAIL *in* POSSESSION *of* PROPERTY *of all descriptions, creating Interests in Fee Simple and Absolute Interests. (Equitable Interests.)*

Parties.

THIS DISENTAILING DEED is made, &c., BETWEEN A. B., of, &c. (*tenant in tail*) (hereinafter called the Grantor), of the one part, and X. Y., of, &c. (*grantee*) (*a*) (hereinafter called the Trustee), of the other part: WHEREAS:—

Settlement.(*b*)

(1) Under a Deed (hereinafter called the Settlement) dated, &c., and made, &c., and by reason of the deaths of F. B. (*tenant for life*) on the —— day of —— and of Jane B. (*jointress*) on the —— day of —— [and (*c*) of the satisfaction of all charges and powers of charging having priority over the interest in tail male of the Grantor], and by virtue of the Probate of the Will of the said F. B. having been granted on the (*date*) by the —— Probate Registry to R. T. and S. T. (hereinafter called the Settlement Trustees), specially limited to the land comprised in the Settlement, certain freehold and leasehold properties and rights (including enfranchised lands affected by manorial incidents) situated or arising in the Counties of ——, are now vested in the Settlement Trustees, IN TRUST [subject to the family charges mentioned in the —— Schedule hereto] for the Grantor, who was born on the —— day of —— (*d*), (the eldest [*or* elder *or* only] son of the said F. B.) in tail male, With remainders over: (*e*)

Probate, &c.

Execution by grantee.

Enrolment.

(*a*) It is not necessary for the grantee to execute: *Re Dudson* (1878), 8 Ch. D., at p. 631; *Nelson* v. *Agnew* (1871), Ir. R. 6 Eq. 232; though to prevent a disclaimer, he should always do so: *Peacock* v. *Eastland* (1870), L. R. 10 Eq. 17; 39 L. J. Ch. 534. No enrolment is required: L. P. Act, 1925, s. 133.

Recitals in disentailing assurances.

(*b*) As recitals do not govern the operative parts of disentailing assurances (see F. & R. Act, 1833, s. 21; Dart, 7th ed., 545), they are sometimes omitted, but a short statement showing how the title is derived is desirable. Sometimes, in the case of a tenant in tail in remainder, he has no particulars of the property, or of the settlement, and recitals must be omitted.

Effect of the subsistence or absence of family charges.

(*c*) If there are any subsisting family charges the tenant in tail, though he bars the entail, can only call on the settlement trustees (as his father's personal representatives) to execute a vesting assent to transfer the legal estate in the land to him subject to nominating themselves, as the S. L. Act trustees of the settlement. Having thus acquired the legal estate he can raise money thereon for his own purposes under L. P. (Amend.) Act, 1926, s. 1, without its being paid in the first instance to the S. L. Act trustees. If there are no family charges he can call on the settlement trustees to make an absolute assent in his favour, when they are satisfied that proper provision is being made for payment of duties. In the meantime they can let him into possession without prejudice to their powers: Ad. of E. Act, 1925, s. 43.

When an infant attains twenty-one.

(*d*) This shows that the tenant in tail has attained twenty-one. A person attains twenty-one the day before the anniversary of his twenty-first birthday: Blackstone's Com., Book I, ch. 17, para. 2; Salk. 44, 625. The same principle applies whatever the stated age may be: *Re Shurey* [1918], 1 Ch. 263, 87 L. J. Ch. 245; and see 34 L. Q. R. 225. A corporation may be a person "of full age": *Re Carnarvon* (1926), W. N. 242; 70 Sol. J. 901.

Notice.

Notice in writing of the disentailing deed must be given to the settlement trustees, who as special personal representatives hold the legal estate in the land.

Bar of estates *pur autre vie*

(*e*) If an estate *pur autre vie* was limited in the form of an estate tail, though

Title to capital money and heirlooms.

(2) Under the Settlement and in the events aforesaid and by virtue of divers appointments of new trustees thereof, certain capital money, investments and other personal estate (exclusive of heirlooms) are held by the Settlement Trustees, In trust [subject to the family charges aforesaid] for the Grantor in tail male, with divers remainder over [and certain chattels held as heirlooms are also vested in them, In trust (free from any family charges) for the Grantor [absolutely] [in tail male]. (*If the Settlement was made after* 1925 *the heirlooms would generally be entailed*)] :

Intention to disentail.

(3) The Grantor is desirous of executing such Disentailing Assurance as is hereinafter contained :

NOW, for effectuating the said desire, THIS DEED WITNESSETH as follows :—

1. The Grantor hereby conveys and disposes of unto the Trustee :

Parcels.

Real estate and chattels real.

All and singular the manors or lordships and reputed manors or lordships, advowsons, rectories, messuages, lands, buildings, rents, tithes, rentcharges in lieu of tithes, easements, rights, privileges, and other real estate and chattels real whatsoever and wheresoever, and any interest therein to which the

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and *quasi*-estates tail. Old law.

it descended according to the terms of the limitation during its continuance, the *quasi*-tenant in tail in possession could bar the entail and the remainders over by any act *inter vivos*, without observing the formalities prescribed by the Act of 1833, but not by Will, and the existence of prior incumbrances created no impediment: *Allen* v. *A.* (1841), 2 Dr. & War. 327. The renewal by a *quasi*-tenant in tail in possession of a lease for lives barred the entail and the remainders over, and the result was the same though the surrendered lease might be vested in trustees and they did not concur in the surrender : *Grey* v. *Mannock* (1765), 2 Eden, 339 ; *Blake* v. *B.* (1786), 1 Cox, 266 ; *Campbell* v. *Sandys* (1803), 1 Sch. & Lef. 281 ; *Doe* v. *Luxton* (1795), 6 Term Rep. 289. If the *quasi*-entail was preceded by a life interest, the remainders over were not barred without the concurrence of the tenant for life : *Wastneys* v. *Chappell* (1714), 3 Bro. P. C. 50 ; though without such concurrence *semble* the *quasi*-tenant in tail in remainder could bar his own estate and those of his issue : *Allen* v. *A.*, *supra*. See also Theobald, 7th ed., 518, *et seq.*

Perpetually renewable leases and leases for lives (new law).

Perpetually renewable copyholds have been converted into freeholds : L. P. Act, 1922, s. 135 ; copyholds for years have been converted into leaseholds : *ib.*, s. 133 ; copyholds for lives (*ib.*, s. 133) and other leases for lives at a rent or granted for a fine have been converted into terms of years, terminable by notice : L. P. Act, 1925, s. 149 (6) ; while perpetually renewable leases for lives have been converted into terms of 2,000 years : L. P. Act, 1922, 15th Sch. ; which schedule prohibits the granting of perpetually renewable leases, and renders void a contract to renew for more than sixty years. In these circumstances, after 1924, there will seldom, if ever, be any estate *pur autre vie* to be dealt with ; such interests cannot take effect as legal estates. A lease at a rent or for a fine must take effect within twenty-one years of the grant : L. P. Act, 1925, s. 149 (3).

Grantor is entitled [under the Settlement or any disposition [to the uses or], upon the trusts thereof, or under any subsidiary Vesting Deed or other like assurance (*f*)] for any estate in tail male or in tail in possession, or other entailed interest in possession :

Habendum.

To hold unto the Trustee, in fee simple, discharged from all estates in tail male or in tail, or other entailed interests of the Grantor [under the Settlement or any such disposition as aforesaid,(*f*)] and all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates or interests in tail male or in tail or any of them, and so discharged In trust for the Grantor in fee simple or absolutely.(*g*)

Assignment of money and other pure personalty.(*h*)

2. The Grantor hereby conveys and disposes of unto the Trustee:

All and singular the money and investments mentioned in the —— Schedule hereto, And all other (if any) the money, investments and other personal estate (not being chattels real hereinbefore conveyed, but including any entailed chattels) which, or the proceeds of which, are or may be liable to be settled [Upon the trusts of the Settlement, *or*] on the Grantor

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Variation where no recitals.

(*f*) The words in square brackets will come out if no recitals are used and it is intended to bar generally any estate tail to which the grantor may be entitled.

Stamp under Fin. Act, 1910.

(*g*) No new estate except a fee simple or a base fee must be created, otherwise the *ad valorem* stamp imposed by Fin. (1909-10) Act, 1910, will become payable.

Leaseholds for years.

Leaseholds for years, under the old practice, would have vested in the tenant in tail in possession of full age, and no disentailing assurance was required in regard to them, but they can now be entailed.

Money liable to be invested in land to be settled had to be disentailed (old law).

(*h*) Lands to be sold, where the money arising from the sale thereof was liable to be primarily invested in the purchase of land to be settled (so that any person, if the lands were purchased, would have an estate tail therein) and also money liable to be invested in the purchase of land to be settled (so that any person, if the lands were purchased, would have an estate tail therein) had to be disentailed under the old law, and they were, for that purpose, considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to. But where the property consisted of leaseholds for years held on trust for sale, the proceeds to be invested in freeholds, or of money, such leaseholds or money were, if and when disentailed (in favour of the person for whose benefit the disentailing disposition was made) treated as personal estate: F. & R. Act, 1833, s. 71 ; and see Carson, 2nd ed., 313 ; but s. 71 did not convert disentailed money into personal estate for all purposes, but merely directed that the property should be treated as personal estate for the purposes of the form of a disentailing deed : *Re Dickson's S. E.* [1921], 2 Ch. 103 ; 90 L. J. Ch. 453. Now all personal estate which is entailed should (if so required) be disentailed ; it is on the same footing as real estate.

New law.

for any estate in tail male or in tail in possession, or other entailed interest in possession :

Habendum.

To HOLD unto the Trustee absolutely (*i*) discharged from all estates in tail male or in tail, or other entailed interests of the Grantor, [under the Settlement or any such disposition as aforesaid,(*j*)] and from all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates in tail male or in tail or other entailed interests or any of them, And also discharged from all liability to investment in the purchase of lands and so discharged, IN TRUST for the Grantor absolutely as personal estate.

IN WITNESS, &c.(*k*) (*Add schedules as required.*)

No. II.

DISENTAILING ASSURANCE *by a* TENANT *in* TAIL *in* REMAINDER (*where Settlement is made before* 1926) *with consent of the* PROTECTOR *of the Settlement, of* ENTAILED *property of every description, including* CAPITAL MONEY [*and assignment of* LEASEHOLDS *and* HEIRLOOMS *which have become absolutely vested in the* TENANT *in* TAIL *subject to the* LIFE INTEREST (*l*)] *giving Powers of Appointment.* (*Equitable Interests.*)

Parties.

THIS DISENTAILING DEED is made, &c., BETWEEN

(*i*) If there are family charges these should be charged primarily on the land in exoneration of the personal estate.

(*j*) See note (*f*), *supra*.

Enfranchised lands.

(*k*) Only dealings with legal estates have to be produced to Stewards of Manors, under L. P. Act, 1922, s. 129, hence disentailing deeds need not be so produced, but any consequential assent must be produced within the six months.

Local Deeds Registries.

Though the land may be within the jurisdiction of the Middlesex or Yorkshire Registries a memorial will not be registered as no legal estate passes : L. P. Act, 1925, s. 11 ; though the consequential assent should be so registered.

Advowsons.

As neither a legal estate nor a beneficial interest passes, the deed merely operating to enlarge the entailed interests into fee simple or absolute interests, *semble* notwithstanding the definition "creating any . . . interest" in the Benefices Act, 1898, the deed need not as regards advowsons be registered within one month under that Act, though it may be safer to do so, but the assent, which will transfer a legal estate, should, when made, be so registered.

Dispositions by Will.

A tenant in tail in possession can dispose by Will of entailed interests which he could have disentailed : L. P. Act, 1925, s. 176, subject to complying with that section.

(*l*) See Preliminary Notes and notes to last Precedent.

As to leaseholds and heirlooms.

The leaseholds and heirlooms, if settled in accordance with the practice advocated in the 21st edition (see Forms Nos. 36 and 47, pp. 534 and 540,

F. B., of, &c. (*tenant for life*) (hereinafter called the Estate Owner), of the 1st part, A. B., of, &c. (*tenant in tail*) (hereinafter called the Grantor), the eldest [elder *or* only] son of the Estate Owner, of the 2nd part, and X., of, &c., and Y., of, &c. (hereinafter called the Trustees),(*m*) of the 3rd part: WHEREAS:—

Settlement.

(1) By a Deed (hereinafter called the Settlement) dated, &c., and made between, &c. (whereof the Trustees are the present trustees for the purposes of the Settled Land Act, 1925), the manor, park and mansion of P., in the County of D., the advowson of T., the impropriate rectory of M., and other lands and real estate in the same county, were appointed and conveyed (subject to the incumbrances mentioned in the —— Schedule to the Settlement and affecting the premises or parts thereof) To the Use of the said C. G. (*a term trustee*) for the term of 1,000 years without impeachment of waste, upon certain trusts which have been satisfied, and subject thereto and to rentcharges limited to the Estate Owner during the joint lives of himself and his father, the said W. B. (who died on the —— day of ——), To the Use of the said D. F. (*another term trustee*) for the term of 100 years if the said W. B. should so long live, without impeachment of waste, upon certain trusts which have also been satisfied, and subject as aforesaid To the Use of the said W. B. during his life, with remainder (subject to a jointure rentcharge limited to the said Mary B. for her life if she should survive the said W. B., which has now ceased by reason of her death on the —— day of ——) To the Use of the Estate Owner during his life without impeachment of waste, with remainder To the Use of the first and other sons of the Estate Owner successively according to seniority in tail male, with remainders over: And the Settlement contained powers for the Estate Owner to appoint a jointure and charge portions for his younger children which

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in Settlements Real, Vol. II, 21st ed.), would vest in the tenant in tail absolutely subject to the prior life interest if all the freeholds were disentailed and limited to the tenant in tail in fee simple, but they are assigned here to give a power of appointment for effecting the re-settlement; subject to the exercise of this power, the original trusts are kept alive. Under the forms in use, before the scheme advocated in the 21st ed. came to be used, the leaseholds and heirlooms vested in the first tenant in tail who attained twenty-one. Thus, if he died without making a re-settlement it resulted in the leaseholds and heirlooms devolving in a different way to the freeholds.

Formerly vested in first tenant in tail of full age.

(*m*) The trustees of the settlement are made grantees as they are here given directions as to the future application of the capital money, leaseholds, &c. As disentailing deeds no longer have to be enrolled, there is not the same need for reducing the length of the recitals to the shortest compass, consistently with the story being made clear.

have been partially exercised in the manner appearing in the —— Schedule hereto in favour of Jane B., his present wife, and his younger children by her, and powers to create other charges on the said properties, including a power to raise money by mortgage to be applied in the purchase of land to be conveyed to the uses declared by the Settlement concerning the freehold property thereby settled: And certain properties then copyhold of the Manors of —— (to which the Trustees, as the present trustees of the Settlement, were admitted on the —— day of ——) were directed to be held upon trusts corresponding so far as might be with the limitations of the said freehold properties:

[Special trust settling leaseholds and heirlooms, former practice.]

[And certain leasehold properties held for years and chattels directed to be held as heirlooms, which were by the Settlement vested in the Trustees, were directed to be held on usual trusts to devolve with the said freehold properties, and it was thereby provided that the same should not vest absolutely in any person thereby made tenant in tail by purchase of the freehold premises (i) who died under the age of twenty-one years, or (ii) who died before he became entitled to the actual possession or the receipt of the rents and profits of the said heirlooms and leaseholds, or (iii) who died before the expiration of twenty-one years from the determination of all estates for life preceding his estate in tail male without in either of the two last-mentioned cases having with the consent of the protector of the Settlement (if any) either barred the entail in all the freehold properties for the time being subject to the limitations thereof or declared by deed that the said leasehold properties and heirlooms or any of them should (without prejudice to any prior estate, interest or charge) vest in him absolutely, but that on the death of any such person before attaining an absolutely vested interest in the said leaseholds and heirlooms the same should devolve as if they had been freehold of inheritance and included in the limitations of the freeholds thereinbefore contained(*n*)]:

Marriage of tenant for life.

Birth of tenant in tail.

(2) On the —— day of —— the Estate Owner married the said Jane B. (then Jane S., Spinster) and there has been issue of the said marriage an eldest son, the Grantor, who was born on the —— day of ——, and two other children:

Variations not required if leaseholds and chattels have vested in tenant in tail.

(*n*) The references to the leaseholds for years and heirlooms will be varied if they have become absolutely vested in the tenant in tail and a re-settlement is to be made forthwith on his marriage. In any case, however, it is expedient to make them subject to a joint power of appointment as this facilitates a re-settlement.

[Sale and payment into court.(*o*)]

[(3) In the year —— the Corporation of M., under an Act of Parliament enabling them and incorporating the Lands Clauses Acts, required and took for the purposes of their said Act certain lands, part of the freehold property comprised in the Settlement, and the purchase-money for the same, amounting to £——, was paid into Court under the Lands Clauses Consolidation Act, 1845, and invested in Consolidated Stock, part of which has since been sold and the proceeds have been invested in the purchase of lands which have been made subject to the Settlement, and there is now in Court to the Credit of *Ex parte, &c.*, a balance of £—— Consolidated £2 10s. per cent. Stock :]

Sales, &c.

(4) Divers sales and dispositions have been made under the powers conferred by the Settled Land Acts, and with the money arising thereby, and with money raised for the purpose under the power contained in the Settlement, other lands have been purchased and made subject to the Settlement, and there now remain in the hands of the Trustees the investments and money mentioned in the —— Schedule hereto liable to be invested in the purchase of land to be made subject to the Settlement :

Statutory vesting in tenant for life.

(5) By virtue of the First Schedule to the Law of Property Act, 1925, all the real estate and chattels real subject to the limitations of the Settlement became vested in the Estate Owner upon the trusts of that Settlement :

Principal vesting deed.

(6) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Estate Owner of the other part, it was declared that the said real estate and chattels real were vested in the Estate Owner on the trusts of the Settlement and the Trustees were thereby declared to be the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Subsidiary vesting deeds.

(7) Since the date of the said Vesting Deed other real estate and chattels real have been acquired with capital money held on the trusts of the Settlement and by Subsidiary Vesting Deeds have been conveyed to the Estate Owner to be held on the trusts of the Settlement :

Desire to disentail.

(8) The Estate Owner and the Grantor are desirous of executing such Disentailing Assurance as is hereinafter contained :

Payments into court.

(*o*) Compensation money on a compulsory purchase will seldom be paid into court after 1924 : L. P. Act, 1925, s. 42 (7) ; and see S. L. Act, 1925, s. 76, as to money in court.

NOW, in consideration of the premises, THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Grantor (with the consent of the Estate Owner, as protector of the Settlement, testified by his execution hereof) hereby conveys and disposes of, and the Estate Owner as to his life interest in the property hereby also (*p*) conveys, releases and confirms unto the Trustees :

Parcels, entailed real estate and chattels real.

ALL the manors or lordships, reputed manors or lordships, advowsons, rectories, messuages, lands, minerals, rents, tithes, rentcharges in lieu of tithes, easements, rights, privileges, and other real estate (including enfranchised lands) and chattels real or any interest therein (*q*) comprised in or expressed to be assured by the Settlement or by any vesting instrument made in relation thereto and now remaining unsold, or which by purchase, exchange, allotment or by any other means have become and are now subject to the subsisting limitations or trusts of the Settlement :

Habendum.

Exoneration.

TO HOLD unto the Trustees in fee simple or absolutely SUBJECT [(exclusively and in exoneration of the money and investments hereinafter mentioned and assigned (*r*))] to the family charges

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(*p*) The tenant for life should convey in order that the joint power of appointment may overreach the life interest which, subject to any exercise of the power, is restored.

Creation of entailed interests in leaseholds acquired with capital money.

Where, after 1925, capital money is laid out in the purchase of leaseholds, the subsidiary vesting deed will declare that they are to be held on the same trusts as the land comprised in the principal vesting deed ; though this may include leaseholds, which have become vested absolutely in the tenant in tail subject to the life interest, still if the capital money was entailed as arising from or being primarily liable to be laid out in the purchase of freeholds (S. L. Act, 1925, s. 75 (5)) or was held on the same trusts as if it had arisen from freeholds : *ib.*, s. 78 (4), *semble*, the tenant in tail will (L. P. Act, 1925, s. 130 (3)) take an entailed interest and not an absolute interest in the leaseholds. The point does not arise where the settlement is made after 1925, and *all* the land (leasehold as well as freehold) is entailed.

Parcels in disentailing deeds.

(*q*) A disentailing deed need not contain any specific description of the property ; in fact it is better omitted, as useful information is given facilitating loans to the son on his reversion without the consent of the father.

Advowsons.

No estate is created in any advowson, hence the deed need not be registered under the Benefices Act, 1898.

Stamp ; Fin. Act, 1910.

On no account must any new estate (except a fee simple) be created by a disentailing deed, otherwise an *ad valorem* stamp will be required under Fin. (1909-10) Act, 1910, s. 74. The joint power of appointment does not create a new estate.

When the family charges should be charged primarily on the land.

(*r*) If the estates are large and personal funds small, this exoneration enables the court and the trustees to part with these funds safely and properly notwithstanding the charge of jointure and portions, the duties, if any, being commuted. Where the capital money is disentailed, to be held in trust for the tenant in tail absolutely, these words are required, but not, as mentioned in the —— Schedule hereto and also SUBJECT to such of the legal incumbrances mentioned in the —— Schedule to the Settlement [to the Vesting Deed of even date with the Settlement] as now remain undischarged and to the legal incumbrances created under the statutory powers [as extended by the Settlement] and now subsisting, BUT freed from the life interest of the Estate Owner under the Settlement and all powers of charging and other powers annexed to or exercisable during the continuance of such life interest, AND ALSO freed from the interest in tail male of the Grantor, under the Settlement, and all other interests in tail male or in tail (if any) of the Grantor, or the Estate Owner, and all estates, interests, rights and powers to take effect after the determination or in defeasance of such entailed interests or any of them, and so subject and freed :

Incumbrances.

Discharge.

(1) UPON such trusts, and in such manner generally as the Estate Owner and the Grantor shall from time to time or at any time by deed, revocable or irrevocable, jointly appoint :

Powers of appointment and subject thereto on the old trusts.

(2) [AND in default of and subject to any such appointment, Upon such trusts and in such manner as the survivor of them, the Estate Owner and the Grantor, shall (for the purpose only of limiting the said properties upon trusts corresponding with the limitations or trusts from time to time affecting the capital money and investments hereinafter mentioned) from time to time, by any deed revocable or irrevocable, or by Will or Codicil, appoint :(s)]

(3) AND in default of and until and subject to any such appointment, Upon the trusts and subject to the powers and provisions which immediately before the execution hereof were subsisting with respect to the premises hereby expressed to be conveyed and so as to restore the same.(t)

2. THE Grantor (with the consent of the Estate Owner, as protector of the Settlement, testified as aforesaid) hereby conveys and disposes of, and the Estate Owner as to his life

Assignment.

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in the present case, where the capital money is to be held upon such trusts, &c., as the tenant for life and tenant in tail may appoint.

(s) The power of appointment for the survivor will only be required when a re-settlement of the land is postponed till the son's marriage, the capital money only being settled in the first instance.

(t) This restoration trust takes effect under S. L. Act, 1925, s. 22 (1). No new interest is created. The effect is that the old interests remain on foot subject to letting in the new powers of appointment. The word " restoration " is not very apt, for the old interests are never destroyed ; compare *Parr* v. *A.-G.* [1926], A. C. 239, in regard to the old law and article in 69 Sol. J. 207.

Effect of restoration of interests in a disentailing deed.

interest in the property hereby also conveys, releases and confirms unto the Trustees:

Parcels, entailed pure personalty.

ALL AND SINGULAR the money and investments mentioned in the —— Schedule hereto [And also ALL THAT the said sum of £—— Consolidated £2 10*s.* per cent. Stock now in Court to the credit of *Ex parte*, &c.] And all other (if any) the money and investments and other personal estate (not being chattels real, hereinbefore conveyed, but including any entailed chattels) which are now by any means subject to the trusts of the Settlement and belong to the Grantor for an entailed interest or which, or the produce of which, are or is liable to be laid out in the purchase of land to be made subject to the Settlement.

Habendum.

Exoneration.

Discharge.

TO HAVE AND RECEIVE the same unto the Trustees [discharged so far as may be from the family charges mentioned in the —— Schedule hereto, and from the other incumbrances before mentioned or referred to, and so that the same may be charged exclusively on the properties expressed to be conveyed by clause one hereof in exoneration of the said money and personal estate expressed to be conveyed by this clause,(*u*) and] freed from the life interest of the Estate Owner under the Settlement and all powers of charging and other powers annexed to or exercisable during the continuance of such life interest AND also freed from the interest in tail male of the Grantor under the Settlement, and all other interests in tail male or in tail (if any) of the Grantor or the Estate Owner, and all estates, interests, rights and powers, to take effect after the determination or in defeasance of such entailed interests or any of them, and also freed from all liability to be invested in the purchase of lands, and so [discharged and] freed [IN TRUST for the Grantor, absolutely,(*u*) *or*]

Powers.

(1) UPON SUCH TRUSTS and in such manner generally as the Estate Owner and the Grantor shall from time to time, or at any time, by deed revocable or irrevocable, jointly appoint;

(2) AND in default of and until and subject to any such appointment, Upon the trusts and subject to the powers and provisions which, immediately before the execution hereof, were subsisting with respect to the premises expressed to be conveyed by this clause, and so as to restore the same and any trust applicable thereto for the purchase of land.

(*u*) These words will only be required where the capital money is disentailed in trust for the tenant in tail absolutely.

[3. THE Estate Owner, as to his life interest in the property, hereby assigns, and the Grantor, as to his absolute interest in reversion, hereby assigns unto the Trustees :

[Assignment of leaseholds and heirlooms vested absolutely in the tenant in tail so as to confer powers of appointment.

FIRST, All and singular the leasehold properties held for any term of years which are now by any means subject to the trusts of the Settlement, but are not entailed ;

AND SECONDLY, All and singular the chattels settled by the Settlement so as to devolve as heirlooms along with the freehold properties thereby settled, and all other (if any) the chattels, which by purchase or exchange or any other means are now subject to the trusts of the Settlement, but are not entailed ;

Habendum.

TO HOLD unto the Trustees as to the said leasehold properties for the respective residues of the terms for which the same are respectively held (and subject so far as affected thereby to the family charges and incumbrances aforesaid), and as to the said chattels absolutely :

Powers.]

(1) UPON SUCH TRUSTS and in such manner generally as the Estate Owner and the Grantor shall from time to time, or at any time, by deed revocable or irrevocable, jointly appoint :

(2) AND in default of, and subject to any such appointment, Upon such trusts, and in such manner as the survivor of them shall (for the purpose only of limiting the premises upon trusts corresponding with the trusts from time to time affecting the capital money, and property mentioned in clause two hereof), from time to time by any deed revocable or irrevocable, or by Will or Codicil appoint :

(3) AND in default of, and until and subject to any such appointment, Upon the trusts and subject to the powers and provisions which, immediately before the execution hereof, were subsisting with respect to the premises conveyed by this clause, and so as to restore the same.(v)]

[Declaration as to vesting leaseholds and heirlooms.]

[4. THE Grantor in exercise of the power for this purpose conferred by the Settlement (with the consent of the Estate Owner as protector of the Settlement, testified by his execution hereof) hereby declares that all the leasehold properties and

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Conveyances by tenant for life and remainderman.

(v) No legal estate is conveyed by this deed: S. L. Act, 1925, ss. 13 and 18; a tenant for life and remainderman cannot make a title to the land (L. P. Act, 1925, s. 42), so long as the land remains settled land; but if the tenant for life surrenders his life interest to the remainderman, or the latter releases his remainder to the former, then a deed of discharge can be made under S. L. Act, 1925, s. 17, and the legal estate can be conveyed under *ib.*, s. 7, to the person entitled to call for it.

chattels now subject to the trusts of the Settlement shall (without prejudice to any prior estate, interest or charge) forthwith vest in the Grantor absolutely so far as may be necessary for giving effect to the foregoing assignment and powers of appointment, but subject to any exercise of those powers the same shall be held Upon the trusts and subject to the powers and provisions which immediately before the execution hereof were subsisting with reference to those premises respectively.(*w*)]

In witness, &c. (*Add Schedules.*)

No. III.

DISENTAILING ASSURANCE *by a* TENANT *in* TAIL *in* REMAINDER *with the consent of the* TENANT FOR LIFE *as* PROTECTOR *of the* SETTLEMENT *where the* SETTLEMENT *is made after* 1925. (*Equitable Interests.*)

Parties.

(*The Estate Owner* (*tenant for life*) *the Grantor* (*tenant in tail*) *and the Trustees as in last Precedent*): Whereas :—

Principal vesting deed.

(1) By a Vesting Deed (hereinafter called the Principal Deed) dated, &c., and made, &c. (*referring to the Trustees as* "the Original Trustees") certain freehold properties and rights (including enfranchised lands affected by manorial incidents) and leasehold properties situated or arising in the counties of —— were stated to be held by the Estate Owner upon the trusts of a Trust Instrument of even date therewith (being the Settlement next hereinafter mentioned) and the Original Trustees were stated to be the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

Trust deed of even date.

(2) By a Deed (hereinafter called the Settlement) bearing even date with and made between the same parties as the Principal Deed and in the same order (being a settlement made

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As to leaseholds and heirlooms.

(*w*) No declaration as to the leaseholds and heirlooms will be required if they have absolutely vested in the tenant in tail or if they were entailed under the new law.

Effect if freeholds limited to tenant in tail in fee simple.

If instead of taking a power of appointment all the freeholds are, subject to the life estate, limited to the tenant in tail in fee simple, then this would operate under the special trusts recommended in Vol. II of the 21st ed. of this book, without any declaration, to vest the leaseholds and heirlooms in the tenant in tail, subject to the life interest.

Entailed leaseholds and heirlooms.

If the leaseholds and heirlooms are entailed (as would usually be the case where the settlement is made after 1925) then the entailed interests should be barred, the leaseholds will be included in clause 1 with the other land, and the heirlooms will be included in clause 2 with other entailed personal estate.

in consideration of the marriage shortly afterwards solemnised between the Estate Owner and the said Jane B., then Jane S., Spinster) the Estate Owner declared that he would, after the solemnisation of the said marriage, stand possessed of the said properties UPON TRUST that the said Jane B. should during their joint lives receive thereout a yearly sum of £—— by way of pin-money and subject thereto UPON TRUST for himself during his life without impeachment of waste, With remainder UPON TRUST for the Original Trustees for a term of 1,000 years without impeachment of waste on usual trusts for raising portions for the younger children of the said marriage and their issue and subject thereto UPON TRUST for the first and other sons of the Estate Owner (by any marriage) successively according to seniority in tail male, with divers remainders over; AND by the Settlement the Original Trustees were directed to stand possessed of certain mortgage debts and investments which had been previously transferred to them UPON TRUSTS as if the same were capital money or investments representing capital money arising under the Settled Land Act, 1925, from the freehold properties thereby settled; And by the Settlement certain chattels were assigned to the Original Trustees UPON TRUST to permit the same to be held and enjoyed as heirlooms along with the mansion house of —— and other freehold properties thereby settled; And by the Settlement the Original Trustees were appointed to be the trustees thereof for the purposes of the Settled Land Act, 1925, and power was given to the Estate Owner during his life to appoint new trustees thereof: (*x*)

Capital money.

Heirlooms.

S. L. Act trustees.

Changes among the Trustees.

(3) By reason of certain deaths and by virtue of divers deeds of appointment and discharge the Trustees became and are the present Trustees of the Settlement for the purposes of the Settled Land Act, 1925; and the capital money, investments

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(*x*) If the settlement is made by Will in place of the first two recitals in the text, there should be recited—(1) The Will showing the appointment of executors, the appointment of S. L. Act trustees, and the devise of land and limitations down to the limitation which creates the estate tail; also any bequest of heirlooms and any residuary or other bequest of personalty making it capital money, and the power to appoint new trustees. (2) The death of the testator and probate. (3) The vesting assent in regard to land in favour of the estate owner (tenant for life) on the trusts of the Will, and the nomination therein of the S. L. Act trustees. It will not be necessary as a rule to refer to "additional" powers.

Variations if settlement is made by Will.

If entailed interests have been created in personalty (including the proceeds of sale of land held on trust for sale), *e.g.*, by a Personalty Settlement, or Will, or by reason of a limitation to tenants in common in tail, the recitals must be varied to meet the circumstances.

Entailed interests under personalty settlement or will.

and heirlooms subject to the trusts of the Settlement have been duly transferred to or vested in them :

Subsidiary vesting deeds.

(4) Certain capital money held on the trusts of the Settlement has been applied in the purchase of freehold and leasehold properties, and the same [with certain lands acquired on exchanges] have by Subsidiary Vesting Deeds been conveyed to the Estate Owner to be held on the trusts of the Settlement :

Sales, &c.

(5) Certain sales and other dispositions have from time to time been made under the statutory powers, and the capital money thereby arising, with the other capital money and investments originally comprised in the Settlement, are now represented by the money and investments mentioned in the Schedule hereto, save so far as the money has not been applied in the purchase of land or in effecting authorised improvements :

Issue of marriage.

(6) There has been issue of the said marriage —— children and no more, of whom the Grantor (who was born on ——) is the [eldest] [elder] [only] son :

Desire to disentail.

(7) The Estate Owner and the Grantor are desirous of executing such disentailing assurance as is hereinafter contained : NOW, in consideration of the premises, THIS DEED WITNESSETH as follows :—

Real estate and chattels real.

1. [*As in clause* 1 *of last Precedent, with such variations of the parcels as may be required.*]

Personalty.

2. [*As in clause* 2 *of last Precedent, with like variations as to parcels.*]

IN WITNESS, &c. [*Add Schedule of capital money and investments.*]

No. IV.

DISENTAILING ASSURANCE *by* TENANT *in* TAIL *in* REMAINDER *with the consent of the* PROTECTOR *of Capital Money and Investments, all the land having been sold; the* TENANT *in* TAIL *taking an immediate* ADVANCE. (*Equitable Interests.*)

Parties.

THIS DISENTAILING DEED is made, &c., BETWEEN F. B., of, &c. (*tenant for life*) (hereinafter called the Estate Owner), of the 1st part, A. B., of, &c. (*tenant in tail*) (hereinafter called the Grantor), of the 2nd part, and L. M., of, &c., and N. O., of, &c. (hereinafter called the Trustees), of the 3rd part : WHEREAS :—

Will, &c.

(1) G. B., deceased (hereinafter called the Testator), duly made his Will dated, &c., and thereby, after appointing the

Trustees to be his executors and the trustees thereof for the purposes of the Settled Land Act, 1925, devised his freehold property known as —— to the Estate Owner, his Wife (who was born on the ——), in fee simple, UPON TRUST for herself during her life, without impeachment of waste, with remainder, UPON TRUST for Grantor, his son (then an infant having been born on ——) in tail, with divers remainders over :

Death; Probate duties.

(2) The Testator died on ——, 1926, without having revoked or altered his said Will, which was on the —— duly proved at the —— Probate Registry by the Trustees, and shortly after the death of the Testator all the estate duty attributable to the said freehold property (amounting to the sum of £——), with any succession duty payable by the Estate Owner in respect of the said property, was paid by her out of her own money, she retaining a charge in respect of the said sum paid for estate duty :

Vesting assent.

(3) By a Vesting Assent dated, &c., and made between the Trustees of the one part, and the Estate Owner of the other part, the Trustees assented to the said property vesting in the Estate Owner in fee simple, upon the trusts of the said Will, and declared that they were the trustees of the Settlement for the purposes of the said Act :

Sales and investments.

(4) All the said property has been sold, and after discharging the costs incidental thereto and the said sum of £—— so advanced for payment of estate duty, the net proceeds are now represented by the investments and money mentioned in the first and second parts of the Schedule hereto :

Agreement to disentail and distribute part.

(5) The Estate Owner and the Grantor have agreed to execute such disentailing assurance as is hereinafter contained and to direct that the premises shall be held on the trusts hereinafter appearing :

NOW, in pursuance of the said agreement, THIS DEED WITNESSETH as follows :—

Assignment of investments.

1. THE Grantor (with the consent of the Estate Owner as protector of the Settlement, testified by her execution hereof) hereby conveys and disposes of, and the Estate Owner as to her life interest hereby conveys. releases and confirms unto the Trustees :

ALL the investments and money mentioned in the Schedule hereto and any other property representing the settled land aforesaid :

TO HOLD unto the Trustees as personal estate, discharged from all liability to be laid out in the purchase of land, and freed from the life interest of the Estate Owner under the recited Will, and from the interest in tail male or in tail of the Grantor therein, and from all remainders, estates and powers to take effect after the determination or in defeasance of any such entailed interest, Upon the trusts hereinafter mentioned.

Trusts.

2. (1) THE Trustees shall stand possessed of the investments and money mentioned in the first part of the Schedule hereto, IN TRUST to pay and transfer the same to the Grantor absolutely :

(2) THE Trustees shall stand possessed of the investments and money mentioned in the second part of that Schedule and of the investments for the time being representing the same, UPON the following trusts, namely :—

(i) To raise and pay thereout all the costs of and incidental to the preparation, stamping and execution of this Deed and of the transfers hereinbefore directed to be made ;

(ii) To raise and pay thereout the money required to commute any succession duty in respect of the money and investments mentioned in the first part of the said Schedule which would otherwise be payable on the death of the Estate Owner and the costs incidental thereto ;

(iii) If the Estate Owner dies before the expiration of three years from the date hereof, to raise and pay thereout all estate duty attributable to the investments and money mentioned in the first part of the said Schedule which may then become payable and the costs of discharging the same ;

(iv) Subject as aforesaid, to pay the income of the premises to the Estate Owner during the residue of her life ;

(v) And after her death the premises shall be held, IN TRUST for the Grantor absolutely.

IN WITNESS, &c. [*Add Schedule in two Parts.*]

No. V.

DEED *by* TENANT *in* TAIL *in* REMAINDER *to create a* BASE FEE *or an equivalent interest.*(*y*) (*Equitable Interests.*)

Parties.

THIS DISENTAILING DEED is made, &c., BETWEEN A. B., of, &c. (*tenant in tail*) (hereinafter called the Grantor), of the

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Consent of protector wholly discretionary.

(*y*) As the protector does not consent, a base fee only is created: F. & R. Act, 1833, s. 34. The protector can arbitrarily withhold his consent, he cannot be made to give it by the court: s. 36. The deed need not be enrolled: L. P. Act, 1925, s. 133, but notice in writing must be given to the S. L. Act trustees: *ib.*, s. 137.

one part, and X., of, &c., and Y., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:—

Settlement.

(1) Under a Deed (hereinafter called the Settlement) dated, &c., and made, &c., and by virtue of a Principal Vesting Deed and divers conveyances to uses and Subsidiary Vesting Deeds, certain freehold and leasehold properties in the County of —— are now vested in E. F. (hereinafter called the Estate Owner), UPON TRUST for himself for life, with remainder (subject to certain family charges), UPON TRUST for the Grantor in tail male, with divers remainders over; And by virtue of the Settlement and other instruments (including certain appointments of new trustees) and in the events which have happened, certain personal property is vested in the Trustees, UPON TRUSTS corresponding to the trusts aforesaid:

Desire to create base fee.

(2) The Grantor, as respects the said properties, is desirous of barring his entailed interests and of converting the same into a base fee or an equivalent interest:

Conveyance.

NOW, for effectuating the aforesaid desire, THIS DEED WITNESSETH that the Grantor hereby conveys and disposes of unto the Trustees:

Parcels.

FIRST, All and singular the manors or lordships and reputed manors or lordships, advowsons, rectories, messuages, lands, rents, tithes, rentcharges in lieu of tithes, easements, rights, privileges and other real estate and chattels real, or any interest therein, to which the Grantor is entitled for any estate in tail male or in tail in remainder, or other like entailed interest;

AND SECONDLY, All the capital money, investments, heirlooms and other personal estate to which the Grantor is entitled for any estate in tail male or in tail in remainder or other like entailed interest:

Habendum.

TO HOLD unto the Trustees in fee simple or absolutely (subject to the life interest therein of the Estate Owner and all other (if any) the estates, interests or charges having priority over the estate in tail male or in tail or other entailed interests of the Grantor), but discharged from all estates in tail male or in tail or other entailed interests of the Grantor and all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates in tail male or in tail or other entailed interests or any of them, And so subject and so discharged,

UPON TRUST for the Grantor in fee simple or absolutely, To the intent that any estate tail or other entailed interest of the Grantor may be hereby converted into a base fee or other equivalent interest.(z)

In witness, &c.

No. VI.

DEED *to* enlarge *a* Base Fee *or other equivalent interest into an* Estate *in* Fee Simple absolute *or absolute interest.*(*a*) (*Equitable Interests.*)

Parties.

THIS ENLARGEMENT DEED is made, &c., Between the within-named A. B. (*owner of base fee*) (hereinafter called the Grantor), of the one part, and the within-named X. and Y. (hereinafter called the Trustees), of the other part: Whereas:—

Death of tenant for life.

(1) The within-named F. B. (*tenant for life*) died on the —— day of ——:

Desire to enlarge.

(2) The Grantor is desirous of enlarging the base fee or equivalent interest into which his estate tail or other entailed interest was converted by the within-written Deed (hereinafter called the Principal Deed) into an estate in fee simple absolute or absolute interest:

Conveyance.

NOW THIS DEED WITNESSETH that the Grantor hereby conveys and confirms unto the Trustees:

Parcels.

All and singular the real and personal property and rights comprised in the Principal Deed, and all other (if any) the property and rights which by any means may be or have become subject to the limitations or trusts of the within-mentioned Settlement:

Habendum.

To hold unto the Trustees in fee simple or absolutely,

Upon trust for the Grantor in fee simple or absolutely, discharged from all remainders, estates, interests and powers to take effect after the determination or in defeasance of the base fee or equivalent interest into which the estate tail or other entailed interest of the Grantor was converted by the Principal

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Owner of base fee has the powers of a tenant for life.

(z) When the base fee falls into possession, the owner will have the powers of a tenant for life: S. L. Act, 1925, s. 20.

Acquisition of reversion.

(a) See F. & R. Act, 1833, ss. 19 and 35. Section 39 provides for enlargement by operation of law, where the person entitled to a base fee acquires the reversion.

Deed, To the intent that such base fee or equivalent interest may be enlarged into an estate in fee simple absolute or absolute interest.

In witness, &c.(b)

(b) This need not be enrolled, but notice in writing to the S. L. Act trustees must be given. See notes to last Precedent. When a base fee or an equivalent interest in land has been enlarged, the owner must obtain the legal estate in the land from the representatives of the deceased tenant for life. They will, if there are no subsisting family charges, execute an absolute assent, subject to being satisfied that the duties will be provided for. But if (*cf.* S. L. Act, 1925, s. 17) they have notice of an equitable charge, they will see that legal effect is given thereto, or that it is protected by registration of a land charge, or by deposit of documents, or that the chargee consents to the assent being made. If they have notice of a derivative settlement they will see that legal effect is given thereto by assenting to the land vesting in the tenant for life or statutory owner on the requisite trusts. If they have notice of a trust for sale they will assent to the land vesting in the trustees upon trust for sale. If, on the other hand, any family charges remain on foot under the original settlement, they will execute a vesting assent, nominating the S. L. Act trustees, unless the settlement has come to an end by reason of the creation of a trust for sale, in which case the assent will be to the trustees on trust for sale. If the trustees for sale have been approved by the court, or are a trust corporation, they will be able to overreach the family charges. There is no need for the trustees for sale to be approved by the court, or for a trust corporation to be appointed, if the trustees for sale were the former S. L. Act trustees; they *ipso facto* obtain the overreaching powers: S. L. Act, 1925, s. 36 (2); L. P. (Amend.) Act, 1926; Sch., amending L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3).

Acquisition of legal estate.

Duties of personal representatives.

"Binding" trust for sale.

S. L. Act trustees becoming trustees for sale.

DIVISION III.

APPOINTMENTS OF NEW OR ADDITIONAL TRUSTEES, DISCLAIMERS BY EXECUTORS AND TRUSTEES, DISCHARGES OF TRUSTEES (WHERE NEW TRUSTEES ARE NOT APPOINTED), ASSENTS AND OTHER INSTRUMENTS RELATING TO THE WINDING UP OF TRUSTS AND ESTATES.

Section I.

APPOINTMENTS OF NEW OR ADDITIONAL TRUSTEES.

Preliminary Note.

Precautions to be taken by trustees before accepting office.

Before new trustees accept office they should require to be furnished with a copy of the instrument creating the trust and an account showing the dealings with the funds. If a re-settlement of land has been made in which additional powers are conferred, it may be expedient to ask for a supplemental vesting instrument to be made to bring the story up-to-date in regard to the land, so as to comply with S. L. Act, 1925, s. 18. The intending trustees should satisfy themselves that everything is in order, otherwise, after their appointment, they may find that breaches of trust have been committed by their predecessors in office, necessitating proceedings for the protection of the new trustees. It is also advisable for new trustees to retain a copy of the trust instrument (if any) for purposes of reference—*e.g.*, when a change of investment is requested, for ascertaining whether the particular investment is authorised.

Preparation of appointments of new trustees.

It is the practice to make appointments of new trustees supplemental to the instrument (if any) creating the trust and any previous appointments, and to avoid lengthy recitals so far as possible. In many cases it is found advisable to show by schedules the previous dealings with the trust property (*e.g.*, where proper accounts have not been kept and it is desired to place them on record, especially in the case of the first appointment of new trustees of a Will); in the case of subsequent appointments the story will be taken up from the last appointment. Reference should be made, by the use of schedules or otherwise, to the actual state of the property at the date of the appointment, this, however, may be useless in the case of realty settlements and Wills, for the appointment does not come on the title.

Separate instruments when required.

Trusts for sale.

Memorandum.

If land is held on trust for sale and the trusts of the proceeds are not declared by the instrument creating the trust for sale, there must be two instruments, first, the appointment of new trustees of the conveyance or assent on trust for sale, and secondly, of the settlement, will or other instrument declaring the trusts of the proceeds of sale and of the rents and profits until sale: T. Act, 1925, s. 35 (1), but the same persons must be appointed to be trustees of the conveyance or assent as become the trustees of the proceeds of sale: *ib.* A purchaser is not, however, concerned to see that the proper persons are appointed trustees of the conveyance or assent: L. P. Act, 1925, s. 24. A memorandum of the appointment must be endorsed on the conveyance or assent on trust for sale: T. Act, 1925, s. 35 (3). If the trusts of the proceeds are declared by the same instrument as that which creates the trust for sale (*e.g.*, where the trust for sale is implied by law owing to the land being conveyed to persons beneficially as joint tenants or as tenants in common) then only one deed of appointment will be required. Where there are two deeds, only that which relates to the trust for sale becomes a title deed, the other relates to equitable interests. But a purchaser is not concerned with the trusts affecting the proceeds of sale or the rents, whether or not those trusts are declared by the instrument whereby the trust for sale is created: L. P. Act, 1925, s. 27. Again, in the case of settled land, there must be two instruments, first, the appointment of new S. L. Act trustees of the will, deed, or other instruments creating the settlement or compound settlement (this relates to equitable interests or trust instruments), and secondly, a deed supplemental to the last or only principal vesting instrument declaring that the persons therein named (being the S. L. Act trustees of the trust instrument, *e.g.*, in the case of a compound settlement of that settlement) are the S. L. Act trustees of the settlement: S. L. Act, 1925, s. 35 (1) and (2). Also, a memorandum of the names and addresses of the persons who are for the time being the S. L. Act trustees must be endorsed on the last or only principal vesting instrument in accordance with T. Act, 1925, s. 35 (2).

Protection of purchasers.

Settled land.

Appointment of S. L. Act trustees.

Deed of declaration.

Memorandum

Persons to make the appointment (express powers).

If the settlement or Will contains an express power of appointment, it should be recited, and the appointment expressed to be made in exercise of it. If certain persons are merely nominated to appoint new trustees, the appointment will be made by them under the statutory power: T. Act, 1925, s. 36 (1) (a); unless it is necessary to apply to the court under s. 41 of that Act or s. 34 of the S. L. Act, 1925. A simple power for a named person to appoint new trustees brings s. 36 of the T. Act, 1925, into force, though the power may also operate as a substantive power.

Additional statutory powers to appoint or constitute new trustees.

In addition to the powers to appoint new or additional trustees conferred by T. Act, 1925, ss. 36 and 37, the following special powers are conferred:—

Undivided shares in proceeds.

(1) Persons absolutely entitled in undivided shares to proceeds of sale of land may require the land to be conveyed to not more than four of themselves on trust for sale: L. P. Act, 1925, s. 3 (1) (ii) proviso.

Infants under a partition.

(2) Trustees for sale, when effecting a partition, can constitute themselves trustees for sale of land retained for an infant: *ib.*, s. 28 (4).

Dispositions in undivided shares or to joint tenants.

(3) Dispositions of land in undivided shares or to joint tenants (not holding the land as settled or charity land) create trusts for sale: *ib.*, ss. 34–36 (of these ss. 35 and 36 are amended by L. P. (Amend.) Act, 1926, Sch.); 1st Sch., Pt. IV (as amended in regard to para. 1 (4) (iii) and by inserting a new para. 4 by L. P. (Amend.) Act, 1926, Sch.), and S. L. Act, 1925, s. 36.

Parents or guardians of infant beneficiary may appoint, when.

(4) Where a legal estate formerly vested in an infant and other persons or another person of full age, becomes vested in one person as trustee, and no other person is able or willing to do so, the parents or guardians of the infant may appoint an additional trustee: L. P. Act, 1925, 1st Sch., Pt. III, para. 2. See also S. L. Act, 1925, 2nd Sch., para. 3 (1) (iv) (appointment of S. L. Act trustees in place of Public Trustee).

Infant former trustee or mortgagee (Public Trustee).

(5) Where a legal estate held by an infant as a trustee or personal representative or mortgagee vests in the Public Trustee, and no other person is able or willing to make the appointment, the parents or guardians may appoint new trustees in place of the Public Trustee: L. P. Act, 1925, 1st Sch., Pt. III, para. 3 (i).

Infant's trust or mortgage estate (vesting in co-owner).

(6) Where an infant's trust or mortgage estate becomes vested in a sole co-trustee or co-mortgagee, and no other person is able and willing to make the appointment, the parents or guardians may appoint new trustees in place of the infant: *ib.*, para. 4, proviso. Mortgage terms are not held on trust for sale: *ib.*, s. 34 (2) proviso.

Settled land (held in shares)

(7) Where settled land comes to be held in undivided shares, and vests, in the absence of S. L. Act trustees, in the Public Trustee, the persons having

vesting in Public Trustee.

power under the settlement to appoint new trustees can appoint trustees who will displace the Public Trustee: *ib.*, Pt. IV, para. 3 (v). In view of the amendment to S. L. Act, 1925, s. 31 (L. P. (Amend.) Act, 1926, Schedule), this can seldom happen, save where trustees disclaim.

In place of Public Trustee (undivided shares generally).

(8) In other cases where land, held in undivided shares, vested in the Public Trustee, the persons interested (*e.g.*, trustees for sale of a share, see *Darlington* v. *D.* (1926), W. N. 192) in more than an undivided moiety of the land or of the income thereof may appoint new trustees in place of the Public Trustee, with the consent of any incumbrancers of undivided shares: *ib.*, para. 4 (iii).

Infant entitled under a Will or intestacy (personal representatives).

(9) Where under a Will or an intestacy an infant becomes beneficially entitled to an interest in property, not given to trustees, then the personal representatives may appoint a trust corporation, or two or more individuals not exceeding four, to be trustees of the property: Ad. of E. Act, 1925, s. 42.

Number of trustees to be appointed.

Not more than four trustees of land held in trust for sale (not including charity land), nor more than four S. L. Act trustees can be appointed after 1925; those appointed before 1926 can continue to act, but the number must not be increased: T. Act, 1925, s. 34. Subject to this vacancies may be filled up either by appointing, *e.g.*, three new trustees in place of three, or two in place of three, and the number may be increased up to four or separate trustees appointed in respect of particular funds. A trustee cannot be discharged unless there will be at least two trustees or a trust corporation left to perform the trust: T. Act, 1925, s. 39. That Act does not authorise the appointment of a sole trustee, not being a trust corporation, where the trustee would not (see L. P. Act, 1925, s. 27 (2) as amended; S. L. Act, 1925, ss. 18 (1) (c), 94, 95), when appointed be able to give valid receipts for capital: T. Act, 1925, s. 37 (2).

Vesting declaration (implied).

Separate transfers.

It must be considered whether the implied vesting declaration should be negatived: T. Act, 1925, s. 40. This depends on the class of property. As a rule it should not be negatived. The legal estates or interests in land held by way of mortgage as an investment or a leasehold interest which would, for want of licence to assign, be forfeited, or shares, stocks, &c., transferable only in books kept by a company or other body or in manner directed by statute, are not capable of being vested by a vesting declaration and must be separately transferred: *ib.*, s. 40 (4).

Vesting of property without the aid of a trustee abroad or a lunatic.

A vesting declaration operates like a legal power of appointment under the old law enabling the appointors, &c., to vest property which stands in the names of others: the operation thereof is saved: L. P. Act, 1925, s. 9. This is of particular use when the trustee who is discharged is out of the United Kingdom or a lunatic. A vesting declaration (express or implied) is necessary in the case of things in action, *e.g.*, where the instrument creating the trust contains a covenant to settle after-acquired property, as it passes the legal right to sue. In the case of a strict settlement it will seldom be required save in connexion with things in action and heirlooms, for the land will be held by the tenant for life.

Appointment of S. L. Act trustees who are statutory owners.

But where S. L. Act trustees are acting as statutory owners (S. L. Act, 1925, ss. 23 and 26) the legal estate in the settled land would be vested in them. Hence, when a new trustee is appointed or a trustee is discharged, it must be seen that the legal estate is conveyed by a vesting deed to the trustees who are to act. In such cases the power to appoint new trustees will generally be vested in the surviving or continuing trustees or their representatives (T. Act, 1925, s. 36 (1) (b)), but if it is vested in a named person, then, when he appoints new S. L. Act trustees, the implied vesting declaration should be negatived as respects the settled land if a separate conveyance of the legal estate can be effected by a vesting deed. It should be similarly negatived when the surviving trustees make the appointment.

Vesting orders.

The Court has power to make vesting orders under T. Act, 1925, ss. 44–46; on an application by summons: O. 55, r. 14A; such orders can now be made though the new trustees have been appointed out of court: *ib.*, ss. 44 (i), 51 (1) (i); thus meeting the decision in *Re Dewhirst* (1886), 33 Ch. D. 416; 55 L. J. Ch. 842. For other powers to make vesting orders, see L. P. Act, 1925, ss. 3 (5) (giving legal effect to equitable interests), 9 (legal effect of vesting orders), 30 (when trustees for sale refuse to act), 50 (on discharge of incumbrances), 90 and 91 (on sale of mortgaged property), 133 (as disentailing assurance on behalf of infant), 146 (4) (relief against forfeiture), 171 (1) (lunatic's settlement), 181 (on dissolution of corporation); S. L. Act, 1925, ss. 12 (of settled land or land formerly settled), 16 (giving effect to equitable interests); Ad. of E. Act, 1925, s. 43 (as against personal representatives). The power to re-create a legal estate when a corporation is dissolved is required where it was a trust estate.

Declaration of trust seldom added to an appointment of new trustees.

In some cases a declaration of trust on the part of the new trustees is inserted. The effect of this is to make them specialty debtors in the event of a breach of trust being committed, thus extending the time from six to twenty years within which proceedings can be instituted against them: T. Act, 1888, s. 8. Hence, a declaration of trust should only be inserted where its effect will be to place the new trustees on the same footing as their predecessors. In the case of an appointment of new trustees of a Will it should not be added, for there the former trustees were never bound by executing a deed. In the case of a settlement, if the former trustees executed, it may be added if desired, but is generally omitted.

Execution of express powers.

Where an appointment is made under an express power it should be seen that all the prescribed formalities are complied with. In some old settlements the attestation of two witnesses is required.

Stamps.

By the Stamp Act, 1891, an appointment of a new trustee is made liable to a stamp duty of 10*s.*, and s. 62 provides that every instrument and every decree or order of any court or of any commissioners whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is chargeable with duty as a conveyance or transfer of property subject to a proviso that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than 10*s.*, see *Massereene* v. *I. R. Commissioners* [1900], 2 Ir. R. 138. By the Finance Act, 1902, s. 9, this provision is made to apply to a conveyance or transfer for effectuating the retirement of a trustee, though no new trustee is appointed.

Notice of trust on transfer of mortgage.

Under the L. P. Act, 1925, s. 112, the fact that a transfer of a mortgage bears a 10*s.* stamp does not give notice of a trust, though, if the transfer had been for value, the stamp would have exceeded 10*s.*, *e.g.*, where the mortgage debt transferred exceeds £2,000. It is difficult to see how Fin. (1909-10) Act, 1910, s. 74, could be properly applied to a transfer of a mortgage. Actual notice of the trust is no longer material apart from fraud: *ib.*, s. 113. If an instrument contains an appointment of a new trustee, and also a conveyance of the trust property, it requires two stamps of 10*s.* each: *Hadgett* v. *I. R. Commissioners* (1877), 3 Ex. D. 46.

Stamp.

A vesting declaration (T. Act, 1925, s. 40) similarly attracts an additional stamp of 10*s.*, though at present the Inland Revenue do not claim a stamp for an implied vesting declaration.

Evidence as to vacancy in a trust.

Certain recitals in appointments of new trustees are made conclusive evidence in favour of a purchaser of a legal estate: T. Act, 1925, s. 38; similar statements in a deed declaring who are the S. L. Act Trustees are made conclusive evidence in favour of a purchaser of a legal estate: S. L. Act, 1925, s. 35 (3).

Married woman trustee.

The objections against a married woman being appointed to be a trustee have been removed: L. P. Act, 1925, s. 170.

New law as to trustees.

Generally, as to the new law relating to trustees, see Chap. I, *supra*.

GROUP A.—APPOINTMENTS OF NEW TRUSTEES OF SETTLEMENTS (PERSONAL) AND OF CONVEYANCES ON TRUST FOR SALE.

No. I.

APPOINTMENT *by* HUSBAND *and* WIFE *under an* EXPRESS POWER [VARIATIONS *when made under the* STATUTORY POWER (*a*)] *of* NEW TRUSTEES *of a* PERSONALTY SETTLEMENT (ONE FUND) *comprising* INVESTMENTS *and a* COVENANT *to settle* AFTER-ACQUIRED PROPERTY (*which has not come into Operation*) *in place of a* DECEASED TRUSTEE *and a* RETIRING TRUSTEE.

Parties.

THIS APPOINTMENT is made (*date*), BETWEEN A. B., of, &c., and F. B., his wife (*donees of the power*) (hereinafter called the Appointors), of the 1st part, R. T., of, &c. (*retiring Trustee*), of the 2nd part, C. T., of, &c. (*continuing Trustee*), of the 3rd part, N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 4th part, and the said C. T. and the New Trustees of the 5th part: WHEREAS:—

Recital of Settlement;

(1) This deed is supplemental to a Settlement (hereinafter called the Principal Deed) dated, &c., and made between the

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Power for appointors to appoint themselves as new trustees on a vacancy.

(*a*) See T. Act, 1925, s. 36 (1), which gives power for the persons nominated for the purpose, or if none or no person is able and willing to act, for the surviving or continuing trustees or the personal representatives of the last surviving or continuing trustee, by writing, to appoint one or more other persons (whether or not being the persons exercising the power) to be trustees in the place of the trustee dying, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, or being an infant. This is old law, save that the appointors can now appoint themselves and can make appointments in place of infants. As to infants being unable to act as trustees or personal representatives: L. P. Act, 1925, s. 20; 1st Sch., paras. 3 and 4 (vesting of trust and mortgage estates of infants); Jud. Act, 1925, s. 165 (power to grant probate to an infant only after he attains twenty-one).

In place of infants.

Additional trustees; there being no vacancy.

T. Act, 1925, s. 36 (6), gives power to appoint additional trustees though there may be no vacancy, *semble*, the appointors may not be able to appoint themselves to be additional trustees: *Re Sampson* [1906], 1 Ch. 435; the number may not be increased beyond four. The power to appoint additional trustees is optional save where the trust instrument or a statute (see, *e.g.*, S. L. Act, 1925, s. 30 (3)) requires an additional trustee to be appointed. Though under s. 36 (6) the donees may not be able to appoint themselves this does not apply to an appointment "in place of" the Public Trustee, see L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (4) (iii), as amended.

Evidence of vacancy.

As to evidence of a vacancy in the trust: T. Act, 1925, s. 38, also S. L. Act, 1925, s. 35.

Appointment in place of a lunatic or defective.

If an appointment is made in the place of a lunatic or defective who has some beneficial interest in the property, then leave to make the appointment by a continuing trustee must be obtained in lunacy: T. Act, 1925, s. 36 (9). As to a statement that he was not entitled to a beneficial interest: *ib.*, s. 38 (1).

said A. B. of the 1st part, the said F. B. (then F. A., Spinster) of the 2nd part, and D. T. (since deceased) and the said R. T. and C. T. of the 3rd part (being a Settlement made in consideration of the marriage, shortly afterwards solemnised between the Appointors), whereby certain investments, which had been previously transferred to the parties thereto of the 3rd part and the varied investments for the time being representing the same (therein and hereinafter called the Trust Fund) were settled upon the trusts therein mentioned, and the Principal Deed contained a covenant with the parties thereto of the 3rd part for the settlement of certain after-acquired property of the said F. B., And also a power for the Appointors during their joint lives to appoint a new trustee or new trustees thereof:

one Trust Fund(b).

(*If the Settlement contains a full power stating the cases in which new trustees may be appointed, this should be fully recited.*)

Death of one trustee.

(2) The said D. T. died on the —— day of ——:

State of Trust Fund.

(3) The Trust Fund is now represented by the investments mentioned in the Schedule hereto now standing in the joint names of the said R. T. and C. T.:

No after-acquired property fallen in.

(4) No property has hitherto become subject to the covenant contained in the Principal Deed for the settlement of the after-acquired property of the said F. B.:

Desire of one trustee to retire.

(5) The said R. T. is desirous of being discharged from the trusts of the Principal Deed:(c)

Desire to appoint new trustees.

(6) The Appointors are desirous of appointing the New Trustees to be trustees of the Principal Deed in the place of the said D. T. and R. T.:(d)

Intention to transfer investments.

(7) It is intended so soon as may be after the execution hereof that the investments mentioned in the Schedule hereto shall

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(b) If the Settlement contains an assignment of a reversionary interest, this recital must be varied.

Retirement of a trustee.

(c) Where a trustee retires and a new trustee is appointed in his place, all that is necessary is a recital of the desire to retire, the retiring trustee being made a party to be bound by the recital; where, however, a trustee is discharged and no new trustee appointed, then the retirement must be effected in the operative part: T. Act, 1925, ss. 39, 40 (2), with the concurrence of the other parties. In order that a retiring trustee should obtain a good discharge the rule is (apart from ss. 39 and 40) that a new trustee should be appointed in his place.

As to retaining a vacancy.

(d) If it is desired to retain a vacancy in the trust, then the new trustees may be appointed in the place of the retiring trustee only instead of the deceased and retiring trustee. In this case the retiring trustee would not, it seems, be discharged unless a new trustee were appointed in his place. It is no longer essential to retain a vacancy with a view to a future appointment, for an additional trustee can be appointed: T. Act, 1925, s. 36 (6).

[subject to raising and paying thereout the costs (*e*) of and incidental to the preparation and execution hereof] be transferred into the joint names of the said C. T. and the New Trustees: NOW, for effectuating the said desire and in exercise of the power for this purpose conferred by the Principal Deed [by the Trustee Act, 1925] and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment of new trustees.(*f*)

1. The Appointors hereby appoint the New Trustees to be trustees of the Principal Deed in the place of the said D. T., deceased, and of the said R. T. (who retires from the trust), and to act jointly with the said C. T. for all the purposes of the Principal Deed.

Implied vesting declaration.

2. The requisite vesting declaration shall be implied (*ff*) (save in regard to the mortgage debts mentioned in the schedule hereto which are to be separately transferred).

[Express vesting declaration of things in action.]

[*Or* 2. The Appointors (*g*) hereby declare that all chattels and also the right to recover and receive all debts and other things in action subject to the trusts of the Principal Deed (other than the mortgage debts mentioned in the Schedule hereto which are to be separately transferred as aforesaid) shall forthwith vest in the said C. T., and the New Trustees, for all the estate or interest formerly vested in the said C. T. and R. T., or either of them, and as trustees of the Principal Deed, and as joint tenants for the purposes and upon the trusts thereof.(*h*)]

In witness, &c.

(*e*) As to costs: *Harvey* v. *Olliver* (1887), W. N. 149; *Re Rendell* (1915), 139 L. T. J. 249; *Re Scawe* (1920), 149 L. T. J. 176.

(*f*) If the settlement contains an express power, the appointment should be made under it. If the power merely nominates persons to exercise the statutory powers, the Act may be referred to as well.

Implied vesting declaration.

(*ff*) The vesting declaration is required to pass the legal right to sue on the covenant for the settlement of after-acquired property. It is conceived that the words in brackets relating to the mortgage debts are not essential, as the recital shows that the mortgage debts are to be separately transferred. It is safer to allow the vesting declaration to be implied under s. 40, as this avoids any question as to its being made by the right parties or in the right form. An express Declaration is given to show what form would be applicable. An additional stamp of 10*s*. is required for an express vesting declaration; the Inland Revenue do not claim a stamp for an implied declaration.

Who make the express vesting declaration.

(*g*) Where no new or additional trustee is appointed, then the vesting declaration must be made by the persons having the power to appoint new trustees, by the continuing trustees, and by the trustee who is discharged: T. Act, 1925, s. 40 (2); the expression "new" trustee includes an additional trustee: *ib*., s. 68 (17), hence, in other cases, the persons having power to appoint new or additional trustees alone make the declaration: *ib*., s. 40 (1).

(*h*) If it is desired that a declaration of trust should be added, which

THE SCHEDULE.

Particulars of investments now subject to the trusts of the Principal Deed and intended to be separately transferred.

No. II.

APPOINTMENT *by the* SURVIVOR *of* HUSBAND *and* WIFE *of* NEW TRUSTEES *of a* PERSONALTY SETTLEMENT (TWO FUNDS) *comprising Investments, Mortgage Debts and Reversionary Interests (some of which have fallen into Possession) and a* COVENANT *to settle* AFTER-ACQUIRED PROPERTY *(which has taken effect) in place of a* DECEASED TRUSTEE *and a* TRUSTEE ABROAD. *Also where* LAND *has been purchased under a power [or in breach of* TRUST]. *(Equitable Interests.)*

Parties.

THIS APPOINTMENT, is made, &c., BETWEEN A. B., of, &c. (*surviving donee of the power*) (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (*continuing Trustee*), of the 2nd part, N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part, and the said C. T., and the New Trustees, of the 4th part: WHEREAS:—

Settlement: two Trust Funds.

(1) This Deed is supplemental to a Settlement (hereinafter called the Principal Deed) dated, &c., and made between the Appointor of the 1st part, F. H., Spinster (since deceased) (afterwards and hereinafter called F. B.), of the 2nd part, W. H. (*wife's father*) of the 3rd part, and D. T. (since deceased), A. T. (*the Trustee abroad*), and the said C. T. of the 4th part (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the Appointor and F. B.), whereby certain investments (previously transferred to the parties thereto of the 4th part) and reversionary interests (thereby assigned to them) were settled upon the trusts thereby respectively declared concerning the Husband's Trust Fund and the

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an unusual addition and increases the liability of the new trustees, the following form may be used, but is not recommended.

Declaration of trust.

3. C. T. and the New Trustees hereby declare that they will stand possessed of the said investments, when transferred to them as aforesaid Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held under the Principal Deed.

Wife's Trust Fund therein mentioned, And the Principal Deed contained a covenant for the settlement upon the trusts of the Wife's Trust Fund of certain after-acquired property of F. B., and also a power for the trustees thereof, with the consent of the Appointor and F. B., or of the survivor of them, to purchase (out of either fund) land to be conveyed to the trustees thereof upon the usual trust for sale, And the Principal Deed contained a power for the survivor of the Appointor and F. B. to appoint new trustees thereof:

Death of one trustee.

(2) The said D. T. died on the —— day of ——:

One trustee resident abroad.

(3) The said A. T. has been resident out of the United Kingdom for more than twelve months :(i)

(i) This recital is sufficient evidence of the fact: T. Act, 1925, s. 38.

Trustee abroad.

Bankrupt trustee.

A bankrupt is a person "unfit to act" within the T. Act, 1925, s. 36: *Re Barker* (1875), 1 Ch. D. 43; 45 L. J. Ch. 52; *Re Adams* (1879), 12 Ch. D. 634; 48 L. J. Ch. 613; *Re Hopkins* (1881), 19 Ch. D. 61, 63; and see *Re Wheeler and De Rochow* [1896], 1 Ch. 315; 65 L. J. Ch. 219, disapproved of but followed in *Re Sichel* [1916], 1 Ch. 358; 85 L. J. Ch. 285. The court can appoint a trustee in place of a bankrupt under s. 41, see first two mentioned cases: *Re Betts* (1897), 41 Sol. J. 209; *Re Fitzherbert* (1898), W. N. 58; *Re Dawson* (1899), W. N. 134. The legal estate or interest in the trust property remains in the bankrupt, but can be transferred to the new trustees by vesting declaration, express or implied, or by vesting order, *ib.*, ss. 44 and 51.

Lunatic trustee.

A lunatic is a person "incapable of acting" within the meaning of T. Act, 1925, s. 36: *Re Lemann* (1883), 22 Ch. D. 633; 52 L. J. Ch. 560; *Re Blake* (1887), W. N. 173; *Re Cutler* (1895), 39 Sol. J. 484; and a vesting declaration can be made. Under ss. 128 and 129 of the Lunacy Act, 1890, the Judge in Lunacy can authorise the committee of a lunatic to exercise a power of appointing new trustees on behalf of a lunatic, and a vesting order formerly could be made under s. 129 of the same Act: *Re Shortridge* [1895], 1 Ch. 278; 64 L. J. Ch. 191. Under T. Act, 1925, s. 54 (replacing and amending Lunacy Act, 1922, s. 2 (3)–(5)), where the High Court has power to make orders under that Act in relation to lunatics and defectives who are trustees, the Judge or Master in Lunacy is not to have power to make the order, save that in the four cases mentioned in that section the court or the Judge or Master in Lunacy may have concurrent jurisdiction under the L. C.'s rules. The four cases are (1) Where the lunatic has become a trustee by reason of payment off of a mortgage; (2) An order in lunacy is made authorising a power to appoint a trustee to be exercised; (3) Or an order is made for giving effect to a contract by a lunatic; (4) Or the lunatic is entitled to some beneficial interest. See 2 Wolst. & Cherry, 11th ed.

Concurrent jurisdiction.

Repeals.

The Lunacy Act, 1890, ss. 135 to 138, so far as they relate to lunatic trustees, except where concurrent jurisdiction is given as above, and Lunacy Act, 1911, s. 1, have been repealed: T. Act, 1925, 2nd Sch.

Vesting orders in lunacy.

Applications in lunacy for vesting orders should be made by summons, unless a petition is directed to be presented by the Judge or Master: Lunacy Rule of 29th October, 1900, see W. N. 1900, Part II, 298. The above remarks apply in cases where a lunatic is so found or not.

Receiver to act in place of committee.

An order may be made under Lunacy Act, 1908, s. 1, authorising the receiver of a lunatic not so found to do any act which the committee of a lunatic so found could have done.

Purchase of land out of Husband's Trust Fund under a power.(j)

(4) The sum of £——, being money forming part of the Husband's Trust Fund, has been invested, with the consent of the Appointor [and F. B.], in the purchase and in paying the costs of the purchase of a messuage and property situated at, &c., and which by a Deed (hereinafter called the Conveyance) dated, &c., and made, &c., were conveyed to the then trustees of the Principal Deed in fee simple upon trust for sale, the net proceeds to be held upon the trusts declared by the Principal Deed of money forming part of the Husband's Trust Fund:

State of residue of investments originally representing Husband's Trust Fund.

(5) The residue of the investments originally settled upon the trusts of the Husband's Trust Fund is now represented by the investments mentioned in the first part of the First Schedule hereto, which are standing in the joint names of the said A. T. and C. T.:

Purchase of land in breach of trust and intention to vest it in the new and continuing Trustees.

(j) (4) The sum of £——, being money forming part of the Husband's Trust Fund, has been invested at the request of the Appointor [and F. B.], but in breach of trust, in the purchase and in paying the costs of the purchase of a messuage and property situated at, &c., and which by a Deed (hereinafter called the Conveyance) dated, &c., and made, &c., were conveyed to the then trustees of the Principal Deed on trust for sale without disclosing any trust of the proceeds of sale, and it is intended that the same messuage and property shall by an Appointment already prepared and intended to bear even date herewith be vested in the said C. T., and the New Trustees, in fee simple and as joint tenants upon the trusts of the Conveyance, and that the New Trustees shall be appointed to be new trustees of the Conveyance to act jointly with the said C. T. for the purposes thereof (*see Prec.* IV, *p.* 443, *and note thereto*).

Separate appointment to keep the trusts of the proceeds off the title to the land.

Where the land is not originally conveyed on trust for sale.

If the land was simply conveyed to the trustees in fee simple, and not on trust for sale, without any trusts being disclosed or declared, the position would be the same as the trustees would hold on trust for sale: L. P. Act, 1925, s. 36.

Effect of trust for sale as regards death duties.

When land is conveyed on trust for sale a purchaser does not require evidence of payment of duties on the death of a trustee dying before 1926. As to the protection of purchasers from a charge for death duties arising on a death after 1925, unless a land charge is registered: L. P. Act, 1925, s. 17; L. R. Act, 1925, s. 73.

Effect of purchase in breach of trust.

Continuation of trust for sale.

Under the old law, if land were purchased in breach of trust, without the concurrence of all the beneficiaries, a trust for sale was implied. In favour of a purchaser the trust for sale, whenever created, continues until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale: L. P. Act, 1925, s. 23; *cf. Re Tweedie and Miles* (1884), 27 Ch. D. 315; 54 L. J. Ch. 71. But the survivor being solely and beneficially

State of investments representing reversionary share settled by Husband which has fallen into possession.

(6) The second part of the First Schedule hereto contains particulars of investments standing in the joint names of the said A. T. and C. T., representing the reversionary interest of the Appointor assigned by him in the Principal Deed and which fell into possession in the year ——.

State of investments originally representing Wife's Trust Fund.

(7) The investments originally settled upon the trusts of the Wife's Trust Fund are now represented by the mortgage debts mentioned in the first part of the Second Schedule hereto standing in the joint names of the said A. T. and C. T.:

State of after-acquired property settled by Wife.

(8) The second part of the Second Schedule hereto contains particulars of investments now standing in the joint names of the said A. T. and C. T., representing certain property acquired by F. B. after the solemnisation of her marriage and duly vested in the trustees of the Principal Deed pursuant to the covenant by her therein contained:

Reversionary share of Wife not fallen into possession.

(9) No part of the reversionary interest settled by F. B. in the Principal Deed has fallen into possession:

Death of Wife.

(10) F. B. died on the —— day of ——:

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interested can make a title as if there were no trust for sale: L. P. (Amend.) Act, 1926, Sch., amending L. P. Act, 1925, s. 36.

Defective power to purchase land.

Trust "to retain or sell."

If a personalty settlement contains a mere power to purchase lands, freehold ground rents, &c., without stating that they shall be held on trust for sale, with power to postpone, or declaring trusts of the rents till sale, then L. P. Act, 1925, s. 32, as regards settlements coming into operation after 1911 supplies the deficiency; and see *Re Crips* (1906), 95 L. T. 865, where it was held that a trust "to retain or sell" created a trust for, and not a power of sale; also *Re Gent* [1905], 1 Ch. 386; 74 L. J. Ch. 333; *Re Pope* [1911] 2 Ch. 442; 80 L. J. Ch. 692; *Re Thursby* [1910] 2 Ch. 181; 79 L. J. Ch. 538; *Re Johnson* [1915] 1 Ch. 435. *Per contra*, *Re Hotchkys* (1886), 32 Ch. D. 408. A trust either to retain or sell created after 1925 is construed as a trust for sale with power to postpone: L. P. Act, 1925, s. 25 (4).

Statutory trust for sale.

Section 32 removes the doubt whether the land is subject to a mere power of sale (in which case the tenant for life would make title after a vesting deed had been executed under the S. L. Act) or to a trust for sale (in which case title is made by the persons holding on trust for sale). It also removes the difficulties which existed in case of deaths before 1926 (if the land is not held under an implied trust for sale) by reason of the beneficial trusts being applicable only to personal estate, *e.g.*, absence of words sufficient to transfer the fee simple. The decision in *Re Leigh's S. E.* (1926), 70 Sol. J. 758, relating to S. L. Act, 1925, s. 20 (1) (viii), is no longer law, for trusts for sale have been taken out of the S. L. Act, 1925, by the amendments made to ss. 1 and 3 by L. P. (Amend.) Act, 1926, Sch.; the result is that the words "or until sale of the land" have in effect been repealed. Moreover, all immediate trusts for sale are now "binding" trusts for sale within *Leigh's Case*: L. P. Act, 1925, s. 2 (2), as amended; every trust for sale is sufficient subject, where necessary, to the *subsequent* approval of the trustees, it is no longer necessary that the trust should be created *ad hoc*, though this can still be done.

Trusts for sale *ad hoc*.

Intention to appoint new trustees.

(11) The Appointor is desirous of appointing the New Trustees to be trustees of the Principal Deed in the place of the said D. T. (deceased) and A. T., who is abroad as aforesaid :

Intention to transfer mortgage debts and other investments.

(12) It is intended that the said mortgage debts (*k*) and the interest thereon and the securities for the same shall as soon as practicable be transferred, with the other investments mentioned in the Schedules hereto, into the joint names of the said C. T. and the New Trustees :

Intention to appoint new trustees of Conveyance on trust for sale.(*l*)

(13) It is also intended that by a Deed bearing even date herewith, and made between the same parties and in the same order as the parties hereto, the New Trustees shall under a power for that purpose conferred by the Conveyance be appointed trustees thereof in the place of the said D. T. and A. T., and that the said Deed of even date shall contain a proper declaration (express or implied) for vesting in the said C. T. and the New Trustees the messuage and property comprised in the Conveyance upon the trusts declared by the Conveyance :

NOW, for effectuating the said desire and in exercise of the power for this purpose conferred by the Principal Deed [by the Trustee Act, 1925], and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees.

1. THE Appointor hereby appoints the New Trustees to be trustees of the Principal Deed in the place of the said D. T. (deceased) and of the said A. T., who is abroad as aforesaid, and to act jointly with the said C. T. for all the purposes of the Principal Deed.

Implied vesting declaration.

2. THE requisite vesting declaration shall be implied, but this shall not extend to the mortgage debts mentioned in the Second

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Where separate appointment of new trustees of the mortgage deeds or transfers are required.

(*k*) If the mortgage debts were created in favour of or assigned to the trustees at the time of the marriage, then the new trustees must, by a separate instrument (see Prec. VI, p. 448), be appointed trustees of the mortgage deed or transfer of mortgage. Before the appointment of new trustees is prepared arrangements must be made with the trustee abroad for the execution of the transfers. Otherwise, if he refuses to execute, it will be necessary to obtain a vesting order from the court : *Re Struve* (1912), 56 Sol. J. 551. It is no longer necessary, in order to bring the jurisdiction of the court into play, that the appointment of new trustees should be made by the court : T. Act, 1925, ss. 44 and 51.

Separate transfers of investments and mortgage debts.

Appointment of trustees for sale of land.

(*l*) See Prec. IV, p. 443. The new trustees of the conveyance must not be appointed by this deed : T. Act, 1925, s. 35. The persons having power to appoint trustees of the conveyance on trust for sale are bound to appoint as trustees thereof the same persons who are trustees of the settlement declaring the trusts of the proceeds of sale : L. P. Act, 1925, s. 24 ; but a purchaser is not concerned to see that the proper persons have been appointed to be trustees of the conveyance on trust for sale.

Schedule hereto (to be separately transferred as aforesaid) nor to the land to be comprised in the intended Appointment of even date herewith.

[Express vesting declaration of reversionary interest and other things in action.]

[*Or* 2. THE Appointor hereby declares that the right to receive the reversionary interest settled by F. B. in the Principal Deed and all chattels, and also the right to recover and receive all debts and other things in action (except the mortgage debts intended to be separately transferred as aforesaid) subject to the trusts of the Principal Deed, shall forthwith vest in the said C. T. and the New Trustees for all the estate or interest formerly vested in the said A. T. and C. T. or either of them and as trustees of the Principal Deed and as joint tenants for the purposes and upon the trusts thereof.]

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of the Husband's Trust Fund.

First Part.

Investments representing those originally settled and not laid out in land.

Second Part.

Investments representing the reversionary share settled by the Appointor which has fallen into possession.

THE SECOND SCHEDULE.

Particulars of the Wife's Trust Fund.

First Part.

Investments representing those originally settled.

Second Part.

Investments representing property brought into settlement by F. B. pursuant to her covenant to settle after-acquired property.

No. III.

APPOINTMENT *of* NEW TRUSTEES *of a* PERSONALTY SETTLEMENT (ONE FUND) *by a* CONTINUING TRUSTEE (*m*) *under the* STATUTORY POWER *where the* PERSONS NOMINATED *to Appoint are* DEAD *or are* UNABLE *or* UNWILLING *to* ACT.(*n*) VARIATIONS *where the Appointment is made by a* RETIRING TRUSTEE.(*o*) *Also where there have been* PREVIOUS APPOINTMENTS *of* NEW TRUSTEES *and where* MONEY *has been* ADVANCED *to* CHILDREN *under a* POWER. (*Equitable Interests.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN C. T., of, &c. (*the continuing Trustee*), of the one part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the other part: WHEREAS:—

Settlement.

(1) This Deed is supplemental to a Settlement (hereinafter called the Principal Deed) dated, &c., and made between A. B., of, &c. (since deceased), of the 1st part, F. A., Spinster (since deceased, afterwards and hereinafter called F. B.), of the 2nd part, and X. T., Y. T., and Z. T. of the 3rd part (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the said A. B. and F. B.), whereby certain investments (previously transferred to the

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"Continuing trustee."

(*m*) See T. Act, 1925, s. 36. A continuing trustee is one who is to continue to act after the appointment is executed: *Re Coates to Parsons* (1887), 34 Ch. D. 370; 56 L. J. Ch. 242.

Who have power to appoint trustees and who may be appointed.

(*n*) The words in s. 36, "person or persons nominated for the purpose of appointing new trustees by the instrument creating the trust," refer to the persons nominated either generally or for the purpose of appointing new trustees in the particular event which has happened: *Re Wheeler and De Rochow* [1896], 1 Ch. 315; 65 L. J. Ch. 219; *Re Sichel* [1916], 1 Ch. 358; 85 L. J. Ch. 285. Hence, where persons are nominated to appoint in particular instances and the instance in question is not covered by the instrument, but is so covered by the T. Act, 1925, the appointment must be made by the trustees under the statutory power, and not by the persons nominated: S. C. The donees of the statutory power of appointment can appoint themselves under sub-s. (1) to be new trustees, but not, it seems, under sub-s. (6) to be additional trustees, though, if they refuse to make any appointment, there is nothing to prevent the trustees for the time being from appointing the named donees to be additional trustees.

Trustee nominated dying before testator. Executor intending to renounce.

(*o*) See T. Act, 1925, s. 36 (8). The words "nominated trustee but dying before the testator" in this sub-section do not enable the personal representatives of a person nominated trustee but dying before the testator to appoint under sub-s. (1): *Nicholson* v. *Field* [1893], 2 Ch. 511; 62 L. J. Ch. 1015. But an executor intending to renounce probate, can, before renunciation, appoint new trustees, without thereby accepting the office of executor: *ib.*, s. 36 (5).

parties thereto of the 3rd part), and the varied investments for the time being representing the same (therein and hereinafter called the Trust Fund), were settled upon the trusts therein mentioned [And the Principal Deed contained a power for the trustees thereof, with the consent in writing of the said A. B. and F. B. during their joint lives and of the survivor of them during his or her life, to advance to any child of the said marriage any sum not exceeding one-half of the expectant or presumptive share of such child] [*or* And the statutory power of advancement was applicable for the benefit of the children of the said marriage] And the Principal Deed contained a power for the said A. B. and F. B. during their joint lives and for the survivor of them during his or her life to appoint new trustees thereof [*or if the Settlement contained no power to appoint, say* " But no person was nominated by the Principal Deed to appoint new trustees thereof "]

Death of persons nominated to appoint.

(2) The said A. B. died on the —— day of —— and the said F. B. died on the —— day of ——: (*p*)

Reference to first schedule showing that C. T. is the sole surviving trustee.

(3) As appears from the First Schedule hereto, the said C. T. is now the sole surviving trustee of the Principal Deed, D. T. and D. D. T., his co-trustees, having died, as appears from the same Schedule:

Issue of the marriage and advancement made to one of them.

(4) There was issue of the marriage of the said A. B. and F. B. —— children and no more (none of whom have yet attained vested interests in the Trust Fund),(*q*) including J. B., to whom in the year —— the sum of £—— (*r*) was, in exercise of the power for that purpose conferred by the Principal Deed [*or* was in exercise of the statutory power] and with the consent of the said

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(*p*) This recital will be omitted if the appointment is made on other grounds, in which case it will be recited, *e.g.*, that the donees of the power are unwilling to act. They should then be made parties to admit the statement; this recital is not made conclusive evidence by T. Act, 1925, s. 38.

Indefeasible interests.

(*q*) If all the children have attained indefeasible vested interests, their shares will be distributed and no appointment will be required, except in the case of land which it is desired to sell under a trust for sale to avoid a partition under L. P. Act, 1925, s. 28 (3), though the beneficiaries will generally elect that the land should be conveyed to not more than four of themselves on trust for sale: *ib.*, s. 3 (1) (ii) proviso.

(*r*) Where there have been several advancements or appointments of shares to children, &c., to which it is desired to refer, the facts should be inserted in schedules and recitals substituted here as follows:—

Where several advancements.

(4) There was issue of the marriage of the said A. B. and F. B. —— children and no more, to some of whom advancements have been made, as appears from the —— Schedule hereto.

A. B. and F. B., advanced by the trustees thereof out of his expectant interest in the Trust Fund:

State of Trust Fund.

(5) The residue of the Trust Fund is now represented by the investments mentioned in the Second Schedule hereto standing in the name of the said C. T.:

Desire to appoint, where

(6) The said C. T. is desirous, in exercise of the statutory power conferred on him for that purpose, of appointing the

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Where several appointments of shares in the Trust Fund.

(5) The —— Schedule hereto contains particulars of appointments made by the said A. B. and F. B. in respect to the Trust Fund and of the dealings with shares so appointed.

The Schedules will take the following form:—

Schedule where several advancements.

THE —— SCHEDULE.

Particulars of advancements.

Date.	Amount advanced.	Name of Person to whom Advance made.

THE —— SCHEDULE.

Schedule where several appointments of the Trust Fund.

Particulars of appointments and dealings with appointed shares.

(*Date.*) DEED under the hands and seals of the said A. B. and F. B., being an appointment of one —— share of the Trust Fund to their daughter P. B. in contemplation of her marriage.

(*Date.*) SETTLEMENT between, &c. (*state parties*), whereby the share appointed by the above-mentioned deed was assigned to Trustees.

(*Date.*) DEED under the hands and seals of the said A. B. and F. B., being an appointment of the residue of the Trust Fund among their children other than the said P. B.

(*Date.*) MORTGAGE between (*state parties*), being an assignment by Q. B., one of the sons of the said A. B. and F. B., of his —— share to R. S. by way of mortgage.

surviving trustee continues to act.(s)

New Trustees to be trustees of the Principal Deed in the place of the said D. T. and D. D. T., both of whom have died, as mentioned in the —— Schedule hereto :

[Variation; desire to appoint, where surviving trustee retires.(t)]

[(6) The said C. T. is desirous of retiring from the trusts of the Principal Deed and of appointing the New Trustees to be trustees thereof in the place of himself and of the said D. T. :]

Intention to transfer investments.

(7) It is intended that (after raising and paying thereout the costs of and incidental to the preparation and execution hereof) the investments mentioned in the Second Schedule hereto shall be forthwith transferred into the joint names of the [said C. T. and the] New Trustees, to be held by them upon the trusts of the Principal Deed :

Appointment of new trustees where the surviving trustee continues to act.

NOW, for effectuating the aforesaid desire and in exercise of the power for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

1. THE said C. T. hereby appoints the New Trustees to be trustees of the Principal Deed in the place of the said D. T. and D. D. T. (both deceased) and to act jointly with the said C. T. for all the purposes of the Principal Deed [*or if the surviving Trustee retires, say* " in the place of the said D. T. (deceased) and of the said C. T. (who retires from the trust) and for all the purposes of the Principal Deed "].

Variation where the surviving trustee retires.

Vesting declaration negatived.

2. NO vesting declaration shall be implied herein. [*This assumes that there are no things in action such as reversionary interests, covenants or chattels comprised in the settlement, but that the only property and rights to be transferred will be the scheduled investments. As the vesting declaration is negatived, the appointment clearly will only carry a* 10*s. stamp. As to vesting declarations being implied unless the deed contains " an express provision to the contrary " : T. Act*, 1925, *s*. 40 (2) (b).]

IN WITNESS, &c.(u)

(s) In this case the surviving trustee merely appoints two new trustees to fill up the two vacancies.

Retiring trustee.

(t) Here, as the surviving trustee retires, he must appoint a trustee in his place : T. Act, 1925, s. 36 (1). A trustee can only be discharged under *ib.*, s. 39, without appointing a trustee in his place, where, after the discharge, there will be either a trust corporation (compare Pub. T. Act, 1906, s. 5) or at least two individuals to act as trustees to perform the trust.

Vesting declaration.

(u) It is assumed here that the settlement only comprises investments, and that a vesting declaration is accordingly not required. If it is required, see last two Precedents. As a rule it should not be negatived.

THE FIRST SCHEDULE.

Documents and facts showing that the said C. T. is the sole surviving trustee of the Principal Deed.

——19—. On this date the said X. T. died.

——19—. On this date the said Y. T. died.

——19—. By an Appointment of new Trustees of this date made between the said A. B. and F. B. of the 1st part, the said Z. T. of the 2nd part, and the said D. T., D. D. T. and C. T. of the 3rd part, the said A. B. and F. B. in exercise of the power for that purpose conferred on them by the Principal Deed appointed the said D. T., D. D. T., and C. T. to be Trustees of the Principal Deed in the place of the said X. T. and Y. T. (both deceased) and of the said Z. T., who thereby retired from the trust.

——19—. On this date the said D. T. died.

——19—. On this date the said D. D. T. died.

THE SECOND SCHEDULE.

Particulars of investments now representing the Trust Fund.

No. IV.

APPOINTMENT *of* NEW TRUSTEES *of a* CONVEYANCE *on* TRUST *for* SALE *of* LAND *of* EVEN DATE *with a* PERSONALTY SETTLEMENT.(*v*) VARIATION *where the Land has been purchased under a* POWER *after the Date of the Settlement.* (*Legal Estate.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c., and F. B., his wife (hereinafter called the Appointors), of the 1st part, C. T., of, &c., of the 2nd part, N. T., of, &c., and

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Separate appointments obligatory.

(*v*) To comply with T. Act, 1925, s. 35 (1), the new trustees of the conveyance and settlement must be appointed by separate instruments. If there are several conveyances the appointment may be made supplemental to them all. A purchaser of a legal estate is not affected by notice of the trusts of the proceeds of sale or of the rents and profits until sale, even if those trusts are declared by the instrument whereby the trust for sale is created: L. P. Act, 1925, s. 27 (1).

Notice to be endorsed on conveyance or assent on trust for sale.

Pursuant to T. Act, 1925, s. 35 (3), notice must be endorsed on the conveyance or assent on trust for sale of a legal estate in land where new or additional trustees thereof have been appointed. The notice will state who are for the time being the trustees for sale, thus—

(*Date*) TAKE NOTICE that X. T., of, &c., Y. T., of, &c., and Z. T., of, &c., are the present trustees for sale for the purposes

N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part, and the said C. T. and the New Trustees of the 4th part: WHEREAS:—

Conveyance on trust for sale of even date with the Settlement.(*w*)

(1) This deed is supplemental to a Conveyance (hereinafter called the Principal Deed) dated, &c., and made between the said A. B. (*settlor*) of the 1st part, the said A. B. and F. B. (then F. H., Spinster), of the 2nd part, and D. T., D. D. T. and C. T. of the 3rd part, whereby, in consideration of the marriage shortly afterwards solemnised between the Appointors, certain freehold properties (including enfranchised lands,(*x*) affected by manorial

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of the [within] [above] written Conveyance [Assent] on trust for sale.

This memorandum will be signed by or on behalf of the trustees of the settlement of the proceeds of sale.

Where an assent on trust for sale is made after 1925, whether for giving effect to a trust for sale under a Will or implied on an intestacy (Ad. of E. Act, 1925, s. 33), the memorandum must be endorsed on the assent, not on the probate or letters of administration.

Where there is no separate declaration of trust of the proceeds.

In a few cases the trusts of the proceeds of sale may be declared by the instrument creating the trust for sale, *e.g.*, where the trustees for sale are the beneficial owners and are entitled to the proceeds either jointly or in shares. In such cases there will be only one deed appointing new trustees, namely, of the conveyance.

Variation on purchase under a power.

(*w*) Where the land has been purchased under a power in a personalty settlement, substitute the following recital:—

Conveyance on trust for sale where land purchased under a power in a personalty settlement.

(1) This deed is supplemental to a Conveyance (hereinafter called the Principal Deed) dated, &c., and made between X. (*the Vendor*) of the 1st part, the Appointors of the 2nd part, and D. T., D. D. T., and C. T., of the 3rd part, whereby a messuage and certain properties situated at, &c. (*describe the parcels shortly*), were conveyed to the said D. T., D. D. T., and C. T. in fee simple Upon trust for sale as therein mentioned, and it was thereby provided that the Appointors during their joint lives should have power to appoint new trustees thereof.

Enfranchised lands.

(*x*) If the land is affected by manorial incidents this appointment must be sent to the steward of the manor for endorsement within six months: L. P. Act, 1922, s. 129.

Middlesex and Yorkshire.

If the land is in Middlesex or Yorkshire the deed must be registered in the local deeds registry as affecting a legal estate: L. P. Act, 1925, s. 11. For the purposes of such registration the appointors are deemed to be the conveying parties: T. Act, 1925, s. 40 (5).

Registered land.

If the title to the land held on trust for sale is registered under the L. R. Act, 1925, the heading (*i.e.*, District ——, Title No. ——, and Property ——) should be referred to in the deed; on production of the deed containing the vesting declaration (express or implied) the registrar will enter the names of the new and continuing trustees as proprietors: *ib.*, s. 47. In all cases where land is held on trust for sale, the trustees for sale will be registered as proprietors: *ib.*, s. 94. If the only land held on trust for sale is registered, the incidents) [and certain leasehold properties comprised in the Leases therein mentioned] situated or arising in the County of —— were conveyed to the said D. T., D. D. T. and C. T. [as to the freehold properties (including enfranchised lands)] in fee simple [and as to the said leasehold properties for the residue of the respective terms for which the same were held] UPON TRUST [as to all the properties] to sell the same as therein mentioned,(*y*) and to stand possessed of the net proceeds of sale and of the rents and profits until sale Upon the trusts declared concerning the same by a deed of even date therein referred to; And by the Principal Deed power was given to the Appointors during their joint lives to appoint new trustees thereof:

Death of two trustees.

(2) The said D. T. died on the —— day of —— and the said D. D. T. died on the —— day of ——:

Desire to appoint new trustees.

(3) The Appointors are desirous of appointing the New Trustees to be trustees in the place of the said D. T. and D. D. T.: NOW, for effectuating the said desire and in exercise of the powers for this purpose conferred by the Principal Deed [by the Trustee Act, 1925] and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment of new trustees.

1. THE Appointors hereby appoint the New Trustees to be trustees of the Principal Deed in the place of the said D. T. and D. D. T. (both deceased) and to act jointly with the said C. T. for all the purposes of the Principal Deed.

2. THE requisite vesting declaration shall be implied under section forty of the Trustee Act, 1925.

[Express vesting declaration of land held on trust for sale.]

[*Or* 2. THE Appointors, with the assent of the said C. T., hereby declare that ALL the properties and rights now subject to the trusts of the Principal Deed shall forthwith vest in the said C. T. and the New Trustees (for the estates, terms and interests formerly vested in the said C. T. or which ought to be vested in them as trustees of the Principal Deed), and as joint tenants for the purposes and upon the trusts thereof.]

IN WITNESS, &c. (*z*)

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trust for sale may be inserted in the instrument whereby the trusts of the proceeds of sale are declared; in such a case there will be only one deed appointing new trustees.

Power to postpone sale implied.

(*y*) In every trust for sale of land a power to postpone will be implied unless a contrary intention appears: L. P. Act, 1925, s. 25.

Mortgages.

(*z*) The legal estate in any land can be vested by declaration, except land conveyed by way of mortgage for securing money subject to the trust: T. Act, 1925, s. 40 (4) (a); thus mortgage terms and charges by way of legal mortgage must be transferred separately. But the section does apply to land conveyed

No. V.

CONVEYANCE *on* Trust *for* Sale *of* Land *purchased* without Authority *and originally conveyed without disclosing any* Trust.(*a*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c. (*same parties as last Precedent, but A. B. and F. B. will not be called the Appointors*) : Whereas :—

Conveyance to trustees without disclosing trust.

(1) This Deed is supplemental to a Conveyance (hereinafter called the Principal Deed) dated, &c., and made, &c. (*see last Precedent*), whereby certain freehold [and leasehold] properties at —— were conveyed to the said D. T., D. D. T. and C. T. [as to freeholds], in fee simple [and as to leaseholds for the residue of the terms therein mentioned and as to all the said properties], as joint tenants :

(2) (*Deaths of D. T. and D. D. T.*) :

No beneficial interest.

(3) The said D. T., D. D. T. and C. T.(*b*) never had any beneficial interest in the said properties, and the same ought to have been conveyed to them upon the trusts hereinafter declared as the said C. T. hereby admits :

Agreement to convey.

(4) The said C. T. has at the request of the said A. B. and F. B. agreed to convey the said properties in the manner hereinafter

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Trust deeds for securing debentures.

on trust for securing debentures or debenture stock ; hence, when new trustees are appointed of the Trust Deed securing the debentures or stock, the mortgage terms or charges by way of legal mortgage taking effect (L. P. Act, 1925, ss. 85 (3), 86 (3), 87, 1st Sch., Pt. VII, para. 5, Pt. VIII, para. 7) thereunder can be transferred by a vesting declaration.

Purchase of land in breach of trust.

If land has been purchased in breach of trust and conveyed on trust for sale, then this Precedent will apply as if the land had been purchased under a power. If the land is not conveyed on trust for sale, then the next Precedent (No. V) will be applicable.

Bare trusts.

A vesting declaration may be employed though the only trust may be to convey to some person absolutely interested : *London, &c., Banking Co.* v. *Goddard* [1897], 1 Ch. 642 ; 66 L. J. Ch. 261.

Precedent only applicable if there is no express trust for sale.

(*a*) This Precedent is only applicable where the conveyance to the original trustees does not contain a trust for sale ; if there is a trust for sale, see last Precedent. This is the Precedent of the deed referred to in the recital of the purchase of land in breach of trust contained in the note to Prec. II, p. 433, *supra*. It only carries out the law that land acquired in breach of trust is held on an implied trust for sale, see L. P. Act, 1925, s. 23 (duration of an implied trust for sale). On a sale the purchaser should be made to take these recitals as conclusive evidence. It is assumed that the new trustees have been separately appointed : Prec. II.

(*b*) This shows that no duties are payable, see note to Prec. II, "Effect of trust for sale as regards death duties," p. 435, *supra*. Whether the persons nominated to appoint new trustees of the personalty settlement could appoint new trustees of a conveyance of land acquired with trust money in breach of trust has not been decided ; *semble*, there would be no objection to their doing so, *e.g.*, where one of the trustees had gone abroad or had become a lunatic.

appearing, the parties hereto of the 4th part having become entitled to call for such conveyance:

Conveyance.

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

1. The said C. T., As Trustee, hereby conveys unto the New Trustees and the said C. T.: (*c*)

Habendum on trust for sale.

All the properties and rights comprised in or expressed to be conveyed by the Principal Deed:

To hold unto the said C. T. and the New Trustees, as joint tenants [as to the freehold properties] in fee simple [and as to the leasehold properties for the residue of the respective terms of years for which the same are held] Upon trust that the said C. T. and the New Trustees (hereinafter together called the Trustees) shall, at the discretion of the Trustees, sell the said properties, and shall stand possessed of the net money to arise from any such sale after payment of the costs incidental thereto, and all other capital money arising under the powers conferred by section twenty-eight of the Law of Property Act, 1925, Upon the trusts and subject to the powers and provisions which, under a Deed, dated &c. (being a Settlement made in consideration of the marriage shortly afterwards solemnised between the said A. B. and F. B.), are now subsisting with respect to money forming part of the Trust Fund [*or* the Husband's Trust Fund, *or* the Wife's Trust Fund, *as the case may be*] thereby settled, (*d*) whereof the parties hereto of the 4th part are the present trustees.

Covenants for title with self and others.

(*c*) For the effect of covenants by a person with himself and others: L. P. Act, 1925, s. 82; as to conveyances to self and others or to self alone: *ib.*, s. 72.

Provisions taking the place of the S. E. Act, 1877.

(*d*) In editions before 1926, reliance was placed on S. E. Act, 1877, s. 46, see *Re Laing* (1866), L. R. 1 Eq. 416; 35 L. J. Ch. 282; *cf. Taylor* v. *T.* (1876), 3 Ch. D. 145; 45 L. J. Ch. 848, which gave a power for tenants for life of the proceeds of sale to grant leases for twenty-one years independently of any order made under S. L. Act, 1884, s. 7. The place of the Act of 1877 is taken by S. L. Act, 1925, and L. P. Act, 1925, s. 28. Instead of obtaining orders under S. L. Act, 1884, s. 7 (also repealed), if the trustees for sale refuse to act or delegate their powers, application should be made for an order under L. P. Act, 1925, s. 30.

Money arising under trust for sale.

Money arising under a trust for sale of land is, after 1925, liable to be laid out in the purchase (see S. L. Act, 1925, s. 73) of land which, when acquired, must be conveyed on trust for sale: L. P. Act, 1925, s. 28.

It is assumed that A. B. and F. B. have successive life interests under the personalty settlement. In this case it is conceived that the usual declaration as to the rents and profits should be omitted (it is not supplied by L. P. Act, 1925, s. 32, for the settlement *ex hypothesi* does not contain power to purchase land), and that if a loss is likely to arise in connexion with the breach of trust a scheme for accumulating them as an indemnity fund for the trustees should

Power to appoint new trustees.

2. The said A. B. and F. B. during their joint lives and the survivor of them, during his or her life, shall have power from time to time to appoint a new trustee or new trustees hereof.(e)

In witness, &c.

No. VI.

APPOINTMENT of New Trustees of a Mortgage Debt (settled by a Transfer of even Date with a Personalty Settlement) and Transfer of the Debt and Securities.(f) Variations where the Mortgage was created in favour of Trustees in Consideration of the Marriage. (Legal Estate.)

Parties.

THIS APPOINTMENT AND TRANSFER is made, &c., Between A. B., of, &c., and F. B., his wife (hereinafter called the Appointors), of the 1st part, R. T., of, &c. (*retiring Trustee*), of the 2nd part, C. T., of, &c. (*continuing Trustee*), of the 3rd part, N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 4th part, and the said C. T. and the New Trustees of the 5th part: Whereas:—

Transfer of Mortgage on the marriage.

(1) This Deed is supplemental to a Transfer of Mortgage (hereinafter called the Principal Deed) dated, &c., and made between the said A. B. of the 1st part, the said F. B. (then F. H., Spinster), of the 2nd part, and D. T. and the said R. T. and C. T. of the 3rd part (endorsed on a Deed hereinafter called the Mortgage, dated, &c., and made, &c.), whereby, in consideration of the marriage, shortly afterwards solemnised, between the said A. B. and F. B., the principal sum of £—— and interest thereon secured by the Mortgage were assigned unto

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Indemnity to trustees.

be arranged; in any case the trustees will probably require some indemnity if the land is not to be sold at once. Though consent by the husband and wife may be required to a change of investment the trust for sale should, apart from an indemnity, remain exercisable at the discretion of the trustees.

Defective power to purchase land.

A defective power to purchase land in a personalty settlement coming into operation after 1911 is cured by L. P. Act, 1925, s. 32; the land, when purchased, will be held on trust for sale, with power to postpone and the usual trust of the net rents and profits is implied: *ib.*

Trust to retain or sell.

By the joint effect of ss. 28 and 32 the number of cases, in which land will be acquired in breach of trust, will be much reduced. Further, as regards settlements made after 1925, as a trust to "retain or sell" is to be construed as a trust for sale: *ib.*, s. 25 (4), there will, in future, be less trouble in ascertaining whether land ought to be treated as "settled land," as in *Re Hotchkys* (1886), 32 Ch. D. 408; 55 L. J. Ch. 546, or as held on trust for sale, as in *Re Crips* (1906), 95 L. T. 865; *Re Johnson* [1915], 1 Ch. 435.

(e) This power should follow the words of the like power in the money settlement.

(f) See T. Act, 1925, s. 40 (4); L. P. Act, 1925, s. 114; 3rd Sch., Form No. 1.

the said D. T., R. T. and C. T. upon the trusts therein referred to, And the freehold properties comprised in the Mortgage were conveyed to them for an estate in fee simple, subject to the right of redemption subsisting thereunder (which estate has by virtue of the Law of Property Act, 1925, been converted into a term of 3,000 years without impeachment of waste subject to cesser on redemption), And by the Principal Deed the power of appointing new trustees thereof was conferred on the Appointors during their joint lives :(*g*)

Death of a trustee.

(2) The said D. T. died on the —— day of —— :

State of mortgage debt.

(3) The said principal sum of £——, with the current interest thereon, is still owing to the said R. T. and C. T. upon the security of the Mortgage :

Desire of one trustee to be discharged and for appointment of new trustees.

(4) The said R. T. is desirous of being discharged from the trusts of the Principal Deed, and the Appointors are desirous of appointing the New Trustees to be trustees thereof in his place [and in the place of the said D. T. (deceased) (*h*)] : NOW, for effectuating the aforesaid desire and in exercise of the power for this purpose conferred by the Principal Deed, and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees.

1. THE Appointors hereby appoint the New Trustees to be trustees of the Principal Deed in the place of the said R. T. (who retires from the trust) [and of the said D. T. (deceased)] and to act jointly with the said C. T. for all the purposes of the Principal Deed.

Transfer of mortgage.(*i*)

2. IN consideration of the premises the said R. T. and C. T., As Mortgagees, hereby convey and transfer unto the said C. T. and the New Trustees the benefit of the Mortgage.

Declaration of trust.

3. THE principal sum of £—— now owing upon the security of the Mortgage, and all interest due and to become due thereon, and the full benefit of and the right to exercise and enforce all

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Variation where mortgage was created in favour of the trustees in consideration of the marriage.

(*g*) If, in consideration of the marriage, a mortgage was created in favour of the trustees, then this appointment will be made supplemental to the mortgage. In either case the trusts of the mortgage debt will be declared by reference to the personalty settlement of even date, and a power will be given to appoint new trustees.

Keeping open vacancies.

(*h*) As T. Act, 1925, s. 36 (6), gives power to appoint additional trustees, although there may be no vacancy in the trust, the object of retaining a vacancy is gone unless the donees of the power contemplate appointing themselves to be new trustees.

(*i*) Notice of this assignment should be given to the mortgagor; for the form and effect of the transfer: L. P. Act, 1925, s. 114; 1st Sch., Form No. 1. As to the covenants implied by conveying to self and others: *ib.*, s. 82.

powers and securities for compelling payment of the said sum and interest shall be held, Upon the trusts by the Principal Deed declared or referred to concerning the same.

IN WITNESS, &c.(*j*)

No. VII.

TRANSFER *of a* MORTGAGE *on the* APPOINTMENT *of* NEW TRUSTEES *where the* MORTGAGE DEBT *has been acquired* AFTER *the Date of the* SETTLEMENT.(*k*) (*Legal Estate.*)

Parties.

THIS TRANSFER is made, &c., BETWEEN R. T., of, &c. (*retiring Trustee*), and C. T., of, &c. (*continuing Trustee*) (hereinafter called the Mortgagees), of the one part, and the said C. T., N. T., of, &c., and N. N. T., of, &c. (hereinafter called the Transferees), of the other part: WHEREAS :—

Mortgage.

(1) This deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between X. of the one part, and D. T. (since deceased) and the said R. T. and

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Stamp.

(*j*) The stamp will be 10*s*. It will not be necessary to have the stamp adjudicated, for, on the face of the deed, the transfer is made for effectuating the appointment of new trustees.

Transfer of mortgage held as trust property.

(*k*) In this case the mortgage debt represents an investment by the trustees, and, if properly drawn, the mortgage will have been made to them without any reference to the settlement. The new trustees will be appointed by the instrument appointing trustees of the personalty settlement.

Trusts not disclosed.

It should only be stated that the transferees (*i.e.*, the new and continuing trustees) are entitled to the mortgage debt on a joint account. This does not give a purchaser notice of any trust: *Re Harman and Uxbridge, &c., Ry.* (1883), 24 Ch. D. 720; 52 L. J. Ch. 808. Even if the trusts are accidentally disclosed, a purchaser may, after 1925, disregard them: L. P. Act, 1925, s. 113. If, before 1926, a purchaser had express notice that the mortgage debt was trust property, a fact which was sometimes disclosed in answering requisitions, he was entitled to evidence that the mortgagees were duly appointed trustees, notwithstanding the statutory joint account clause: *Re Blaiberg and Abrahams* [1899], 2 Ch. 340; 68 L. J. Ch. 578; and see *Re Chafer & Randall* [1916], 2 Ch. 8; 85 L. J. Ch. 435; *Re Soden & Alexander* [1918], 2 Ch. 258; 87 L. J. Ch. 529. Now as regards dealings after 1925, a purchaser, when dealing with the mortgagee, has only to act in good faith, he is not concerned to investigate the equitable title to the mortgage debt, or the appointment or discharge of trustees.

Stamp.

Even if the mortgage debt exceeds £2,000 (*i.e.*, the amount covered by a 10*s*. stamp), a stamp of 10*s*. will not give notice of the trust: L. P. Act, 1925, s. 112, but the stamp must be adjudicated if the debt exceeds £2,000.

Transfer to one of selves and another.

As to the covenants implied by transferring to one of themselves and others: L. P. Act, 1925, s. 82. Though this section only speaks of a covenant "by a person with himself and one or more other persons" it must, having regard to sub-s. (2) and to the Inter. Act, 1889, s. 1 (1), be read as referring to covenants by two or more persons, with any one or more of themselves and any other persons, see also L. P. Act, 1925, s. 83.

C. T. of the other part, being a mortgage of the fee simple of certain properties at, &c., for securing payment to the said D. T., R. T. and C. T. of the principal sum of £——, with interest thereon, which mortgage estate has, by virtue of the Law of Property Act, 1925, been converted into a term of 3,000 years without impeachment of waste subject to cesser on redemption under the Principal Deed :

(2) The said D. T. died on the —— day of —— :

(3) The said sum of £——, with the current interest thereon, is still due on the security of the Principal Deed, and now belongs to the Transferees on a joint account :

Money still due on the mortgage and belongs to the Transferees.

NOW THIS DEED WITNESSETH that, in consideration of the premises, the Mortgagees, As Mortgagees, hereby convey and transfer unto the Transferees the benefit of the Principal Deed.

Transfer of mortgage.

IN WITNESS, &c.

GROUP B.—APPOINTMENTS OF NEW TRUSTEES OF WILLS (PERSONAL) OF ASSENTS ON TRUST FOR SALE AND DEED CREATING A SPECIAL TRUST FOR SALE.

No. 1A.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL *giving* MIXED RESIDUE *on* TRUST *for* SALE. (*Equitable Interests.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c. (*donee of power*) (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (*continuing trustee*), of the 2nd part, N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part, and the said C. T. and the New Trustees of the 4th part : WHEREAS :—

Will.

(1) X. Y., deceased (hereinafter called the Testator), by his Will dated, &c., after appointing D. T., D. D. T. (both since deceased), and the said C. T. (hereinafter called the Original Trustees) to be his executors and trustees, and after bequeathing certain legacies (since satisfied), devised and bequeathed to the Original Trustees all his real estate and the residue of his personal estate [Upon the administrative trusts by reference to the Statutory Will Forms, 1925, *or*] [UPON TRUST to sell the real estate (including chattels real) and to call in, sell and convert into money such part of his personal estate as should not consist of money (with power to postpone sale), And out of the money arising thereby and out of his ready money

to pay his funeral and testamentary expenses and debts and legacies and to invest the residue of the said money in any of the investments thereby authorised with power to vary investments] And to stand possessed of the investments thereby directed to be made or authorised to be retained, and the investments for the time being representing the same, Upon the trusts therein mentioned, And the said Will contained a power for the Appointor during his life to appoint a new trustee or new trustees thereof :(*l*)

Death of testator and probate.

(2) The Testator died on (*date*) without having revoked or altered his said Will, which was on (*date*) duly proved at the —— Probate Registry by the executors therein named :

Realisation and investment of residuary estate.

(3) The Original Trustees sold all the real estate of the Testator (except such parts thereof as are mentioned in the Assent hereinafter recited), and converted so much of his personal estate as did not consist of ready money or of authorised investments, and thereout and out of his ready money paid his funeral and testamentary expenses and debts and legacies and the death duties payable out of capital on his death, and invested the residue of the proceeds of such sales and conversion and of his ready money in manner directed by his said Will :

Assent on trust for sale.(*ll*)

(4) By an Assent dated (*date*), the Original Trustees, as the personal representatives of the Testator, assented to the real estate and chattels real therein described vesting in themselves on trust for sale the net proceeds of sale and the rents and profits until sale to be held on the trusts declared concerning the same by the said Will ; And thereby declared that the Appointor had power during his life to appoint new trustees of the said Assent :

Death of two trustees.

(5) The said D. T. died on the —— day of —— and the said D. D. T. died on the —— day of —— :

State of Trust Fund.

(6) The residuary estate of the Testator (other than the real estate and chattels real comprised in the said Assent) is now represented by the investments mentioned in the Schedule hereto standing in the name of the said C. T. :

Desire to appoint new trustees.

(7) The Appointor is desirous of appointing the New Trustees to be trustees of the recited Will in the place of the said D. T. and D. D. T. (both deceased) :

Reference to statutory power.

(*l*) If the Will merely says that the statutory power shall be vested in the donee, or gives to him a general power to appoint trustees, the effect is practically the same, but in the former case the T. Act, 1925, may also be referred to in the operative part.

(*ll*) Personal representatives may assent under Ad. of E. Act, 1925, s. 36, though the testator or intestate died before 1926.

Appointment of trustees of the assent.

(8) By an Appointment, bearing even date with but intended to be executed immediately after this deed and made between the same parties and in the same order, the New Trustees were appointed to be trustees of the recited Assent, and the real estate and chattels real therein comprised were vested in the said C. T. and the New Trustees on the trusts of the said Assent :

Intention to transfer investments.

(9) It is intended that so soon as practicable the investments mentioned in the Schedule hereto shall (after raising and paying thereout the costs of and incidental to the preparation and execution of this Appointment and the said Appointment of even date) be transferred into the joint names of the said C. T. and the New Trustees :

NOW, for effectuating the aforesaid desire and in exercise of the power for this purpose conferred by the recited Will [and the Trustee Act, 1925],(*m*) and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees.

1. THE Appointor hereby appoints the New Trustees to be trustees of the recited Will in the place of the said D. T. and D. D. T. (both deceased), and to act jointly with the said C. T. for all the purposes thereof.

Implied vesting declaration.

2. THE requisite vesting declaration shall be implied under section forty of the Trustee Act, 1925, but it shall not extend to the real estate and chattels real comprised in the recited appointment of even date [nor to the mortgage debts mentioned in the Schedule hereto, intended to be separately transferred].

[Express vesting declaration.] (*n*)

[*Or* 2. THE Appointor hereby declares that all chattels, and also the right to recover and receive all debts and other things in action [except mortgage debts which are intended to be separately transferred] subject to the trusts of the recited Will, shall

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(*m*) If the appointment is made under an express power in effect excluding the statutory power, then it must be recited, and the words will run :—" in exercise of the power for this purpose conferred by the recited Will and of all other powers."

When the declaration should extend to land.

(*n*) This express declaration is inserted to show the effect of the implied declaration ; it is safer to rely on implied vesting declarations. As to separate transfers of mortgages, see last Group of Precedents. If on 1st January, 1926, the real estate and chattels real were vested in trustees for sale under the Will (the executors as such having previously divested themselves of the legal estate) then the vesting declaration (express or implied) contained in the appointment of trustees of the Will should extend thereto and particulars of the land unsold should be scheduled to this appointment, see Vol. II, 21st ed., pp. 695–97 ; for an assent on trust for sale can only be made by executors or administrators (whenever the testator or intestate died) if the land was vested in them as such : Ad. of E. Act, 1925, s. 36 (12).

forthwith vest in the said C. T., and the New Trustees for all the estate or interest formerly vested in the said C. T. and as trustees of the recited Will and as joint tenants for the purposes and upon the trusts thereof.]

IN WITNESS, &c.

THE SCHEDULE.

Particulars of investments intended to be separately transferred.

NO. IB.

APPOINTMENT *of* NEW TRUSTEES *of an* ASSENT *on* TRUST *for* SALE *made in favour of* TRUSTEES *of a* WILL.(*o*) (*Legal Estate.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c. (*donee of the power*) (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (*continuing Trustee*), of the 2nd part, N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part, and the said C. T. and the New Trustees of the 4th part: WHEREAS :—

Assent on trust for sale.

(1) By an Assent dated, &c., D. T., D. D. T. (both since deceased) and the said C. T. (hereinafter called the Original Trustees) assented to the vesting in themselves of the freehold

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Assents on trust for sale.

(*o*) As to assents on trust for sale: Ad. of E. Act, 1925, s. 36; they can be made by administrators as well as by executors in favour of any persons (not being purchasers from the personal representatives) who ought to hold the land on trust for sale, however their title is derived. For a form of assent on trust for sale: L. P. Act, 1925, 5th Sch., Form No. 9.

Separate appointments.

Where the legal estate passes by an assent and the trusts of the proceeds of sale are declared by another instrument (*e.g.*, a Will), separate instruments must be employed to appoint new or additional trustees: T. Act, 1925, s. 35 (1), but the same persons must be appointed trustees: *ib.*, L. P. Act, 1925, s. 24, though a purchaser is not concerned to see that the proper persons have been appointed: *ib.*

Endorsements on assents on trust for sale.

Under T. Act, 1925, s. 35 (3), the following endorsement must be made on the assent on trust for sale to be signed by or on behalf of the trustees of the will declaring the trusts of the proceeds of sale—

"(*Date*) TAKE NOTICE that C. T., of, &c., N. T., of, &c., and N. N. T., of, &c., are the present trustees for sale for the purposes of the [within-] [above-] written Assent on trust for sale."

Endorsements on probates and letters of administration.

Notice of the assent and of any conveyances of legal estates by the personal representatives will also be endorsed on the probate or letters of administration: Ad. of E. Act, 1925, s. 36 (5).

properties, enfranchised lands (affected by manorial incidents), and leasehold properties mentioned in the First, Second and Third Schedules thereto UPON TRUST to sell the same [with the consent of the Appointor during his life, and after his death at the discretion of the Original Trustees], with power to postpone the sale and to stand possessed of the net proceeds of sale and other money applicable as capital, and the net rents and profits until sale Upon the trusts respectively declared concerning the same by the Will dated, &c., of the late X. Y., who died on, &c., which was proved on (*date*) by the Original Trustees as the executors therein named at the —— Probate Registry: And it was thereby declared that [certain powers therein mentioned were (in addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925), exercisable (*p*) [with such consent, or at such discretion, as aforesaid] by the trustees for sale for the time being of the premises, and that] the Appointor during his life had power to appoint new trustees thereof [*or otherwise in accordance with the power, if any, given by the Will*]:

Additional powers.

Power to appoint trustees.

(2) Notice of the said Assent was on (*date*) duly endorsed on the probate of the said Will, and on (*date*) the said Assent was duly endorsed by the Steward of the Manor, of which the said enfranchised lands were held (*q*) pursuant to the Law of Property Act, 1922:

Notice of assent; and production to steward.

(3) By a Compensation Agreement dated, &c., and made, &c., in consideration of a gross sum of £——, paid by the Original Trustees, the manorial incidents affecting the said enfranchised lands were extinguished [and the sporting and mineral rights of the lord of the manor in relation to those lands were acquired and

Compensation agreement. (*r*)

(*p*) Only additional powers relating to the land which are conferred by the Will should be mentioned in the assent, *i.e.*, those powers which may be material to a purchaser, mortgagee or lessee.

Additional powers.

(*q*) For the form of endorsement to be used by the steward, see Vol. II, p. 359.

Endorsement by steward.

(*r*) For a precedent of a compensation agreement made by trustees for sale: Vol. I, pp. 883–85; the compensation money can be paid out of money held on trusts corresponding to those affecting the proceeds of sale of the land: L. P. Act, 1922, s. 139 (1) (iv), (v), proviso.

Compensation agreement between trustees for sale.

Had the compensation agreement been effected before the assent was given it would not have been necessary to produce the assent to the steward; for a precedent of a compensation agreement by personal representatives: Vol. I, pp. 885–86.

Compensation agreement between personal representatives.

If the manorial incidents are not extinguished before new trustees are appointed, the appointment of new trustees must be produced to the steward, for the vesting declaration would not otherwise pass the legal estate in the land.

became vested in the Original Trustees on trust for sale, as aforesaid]:

Deaths of two trustees. (4) The said D. T. died on (*date*) and the said D. D. T. died on (*date*):

Desire to appoint. (5) The Appointor is desirous of appointing the New Trustees to be trustees of the recited Assent in the place of the said D. T. and D. D. T., both deceased:

NOW, for effectuating the said desire, and in exercise of the power for this purpose mentioned in the said Assent [and of the power conferred by the Trustee Act, 1925], and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment of new trustees. 1. THE Appointor hereby appoints the New Trustees to be trustees of the recited Assent in the place of the said D. T. and D. D. T. (both deceased), and to act jointly with the said C. T. for all the purposes thereof [as extended by the said Compensation Agreement].

Vesting declaration. 2. THE requisite vesting declaration shall be implied under section forty of the Trustee Act, 1925 [and shall extend to the sporting and mineral rights acquired under the said Compensation Agreement as well as to the lands and rights comprised in the recited Assent].

IN WITNESS, &c.(*s*)

No. II.

APPOINTMENT *by a* CONTINUING TRUSTEE *of a* NEW TRUSTEE *of a* WILL *where* SEPARATE TRUSTEES *are appointed of a* SETTLED SHARE *and the* CONTINUING TRUSTEE *retires in respect of that* SHARE.(*t*) (*Equitable Interests.*)

Parties. THIS APPOINTMENT made, &c., BETWEEN C. T., of, &c. (*continuing Trustee*), of the 1st part, N. T., of, &c. (*new Trustee of*

Subsidiary conveyances on trust for sale. (*s*) If there have been subsidiary conveyances on trust for sale to the trustees, for instance, they may have acquired other land under an express power in the Will, or under the power conferred by L. P. Act, 1925, s. 28, there can be no objection to the appointment extending to the subsidiary conveyances.

Sale of land since date of assent. If any land has been sold, exchanged or otherwise absolutely disposed of since the date of the assent, this must be recited, and it will be convenient to give short particulars of the land disposed of in a schedule. It is not necessary to endorse notices of dispositions by trustees for sale on the probate, but only of those made by personal representatives as such.

(*t*) See T. Act, 1925, s. 37 (1) (b). It is assumed here that two moieties were settled, and that C. T. appoints N. T. to be a trustee with himself of

Will), of the 2nd part, and N. L., of, &c., and N. N. L., of, &c. (*new separate Trustees of the Settled share*) (hereinafter called the Separate Trustees), of the 3rd part: WHEREAS:—

Will.

(1) *Recite Will, as in Prec.* IA (*omitting D. D. T.*) *down to the words* "Upon the trusts therein mentioned," *and continue* (that is to say), to pay the annual income thereof to his wife S. Y. (since deceased) during her life, And after her death the capital of one moiety of the Trust Fund was directed to be held UPON TRUST to pay the annual income thereof to his daughter Jane D., the wife of, &c., during her life, without power of anticipation during any coverture, And after her death UPON TRUSTS for the benefit of the issue of the said Jane D. as therein mentioned, And the capital of the other moiety was directed to be held UPON TRUST to pay the annual income thereof to his daughter Mary E., the wife of, &c., during her life, without power of anticipation during any coverture, And after her death UPON TRUSTS for the benefit of the issue of the said Mary E. as therein mentioned; And the said Will contained a power for the said S. Y. during her life to appoint new trustees thereof:

Death of testator, &c.

(2) and (3) (*Recite death, probate, &c., and realisation of residue, as in Prec.* IA, *save that the recital will show that all the real estate and chattels real have been sold*):

Death of testator's widow and trustee.

(4) The said S. Y. died on, &c., and the said D. T. died on the —— day of ——:

State of Trust Fund.

(5) The residuary estate of the testator is now represented by the investments mentioned in the Schedule hereto standing in the name of the said C. T.:

No express power to appoint.

(6) No person is nominated by the recited Will to appoint new trustees thereof after the death of the said S. Y.:

Desire to appoint a new trustee of Will and a separate set of trustees of one moiety of the Trust Fund.

(7) The said C. T., as the surviving trustee of the recited Will, is desirous of appointing the said N. T. to be a trustee thereof in the place of the said D. T. (deceased), and also of appointing the Separate Trustees to be separate trustees of the

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one moiety and for the general purposes of the Will, and appoints N. L. and N. N. L. separate trustees of the other moiety. C. T. retires in respect of the last-mentioned moiety, but he can act for the purposes of both moieties: *ib.* If there are not more than three trustees, an additional trustee could be appointed under *ib.*, s. 36 (6), in regard to either moiety, for s. 37 applies where a trustee is appointed of "any part" of the property. It is assumed that all the land (if any) has been sold, if not there will have been an assent on trust for sale and a separate appointment must be made in respect thereof, see last Precedent.

moiety of the testator's residuary estate held IN TRUST for the said Jane D. and her issue as hereinbefore mentioned :

Intention to transfer the moieties.

(8) It is intended that as soon as conveniently may be the said C. T. shall sell so much of the —— Stock in —— mentioned in the Schedule hereto as shall be sufficient to pay the costs of and incidental to the preparation and execution hereof and of the transfers hereinafter referred to or otherwise incurred in the execution of the trusts of the recited Will, And shall transfer (*u*) one moiety of the residue of the said stock and one moiety of the other investments mentioned in the Schedule hereto into the joint names of the Separate Trustees to be held by them Upon the trusts affecting the moiety of the residuary estate of the testator held in trust for the said Jane D. and her issue, And shall transfer the remaining moiety of the said residue and investments into the joint names of the said C. T. and N. T. to be held Upon the trusts affecting the other moiety of the said residuary estate for the benefit of the said Mary E. and her issue :

NOW, for effectuating the aforesaid desire and in exercise of the powers for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of N. T. to be a trustee of the Will (including one share).

1. THE said C. T. hereby appoints the said N. T. to be a trustee of the recited Will of the said X. Y. (deceased), in the place of the said D. T. (deceased), and to act jointly with the said C. T. for all the purposes of the said Will except as regards the moiety of the residuary estate of the said X. Y. by his said Will directed to be held in trust for the said Jane D. and her issue.

Appointment of Separate Trustees of the other share in the place of the continuing trustee of the Will and of a deceased trustee.

2. THE said C. T. hereby appoints the Separate Trustees to be trustees of the recited Will of the said X. Y. in the place of the said C. T. and of the said D. T. (deceased) so far as regards the moiety of the residuary estate by the said Will directed to be held in trust for the said Jane D. and her issue.

Apportionment of shares in residue.

(*u*) If the investments are apportioned before the appointment is executed, the schedule should be divided into two parts containing investments representing each moiety. If there are mortgage debts these should not be divided but apportioned at face value, assuming the securities are sufficient, between the two moieties. The recital will then run:—"And shall transfer the investments mentioned in the first part of the Schedule hereto (representing one moiety of the residuary estate of the testator), &c."

[3. No vesting declaration shall be implied herein by virtue of the said Act.(*v*)]

[Vesting declaration negatived.]

IN WITNESS, &c.

THE SCHEDULE.

Particulars of investments.

No. III.

APPOINTMENT (*by* PERSON NOMINATED *to* APPOINT) *of a* NEW TRUSTEE *of a* WILL *and of a separate* NEW TRUSTEE *of a* SETTLED LEGACY *where a* SURVIVING TRUSTEE *continues to act in respect of the* SETTLED LEGACY *as well as in respect of the* WILL.(*w*) (*Equitable Interests.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN A. Y., of, &c. (*donee of power*) (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (*continuing Trustee*), of the 2nd part, N. T., of, &c. (*new Trustee of Will*), of the 3rd part, N. L., of, &c. (*separate Trustee of the Settled Legacy*), of the 4th part, the said C. T. and

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(*v*) It is assumed that there is no property to which a vesting declaration would apply, but it may be safer to allow a declaration to be implied.

Appointment by a trustee.

When a trustee appoints a new trustee he should communicate with the beneficiaries: *O'Reilly* v. *Alderson* (1849), 8 Hare, 101.

(*w*) See first note to Prec. IA. It is assumed here that one legacy was settled on certain trusts and the residue on others, and that a new trustee is appointed in respect of each fund while the surviving trustee continues to act in regard to both funds.

Appointments of separate sets of trustees for a part without appointing trustees of other parts.

T. Act, 1925, s. 37, is rather wider than the enactments which it replaces, for it authorises separate sets of trustees (in the case of land not exceeding four) for any part of the property held on trusts distinct from those relating to any other part, notwithstanding that no new or additional trustees are appointed for other parts. Any existing trustee may be appointed or remain one of the separate set. One trustee or one separate trustee may be appointed where a sole trustee was originally appointed, save that the Act does not authorise the appointment of a sole trustee (not being a trust corporation) where the trustee, when appointed, would not (*ib.*, s. 14, as amended) be able to give valid receipts for capital.

Appointment of a sole trustee, when authorised.

Filling up of vacancies.

Discharge of trustee on an appointment.

The same principle applies to the filling up of vacancies; a sole trustee (where a sole trustee was originally appointed) can be discharged from the trust when a sole trustee is appointed in his place, provided that the new trustee can give valid receipts for all capital. In other cases the trustee cannot be discharged by reason of the appointment unless there will be a trust corporation or at least two trustees to perform the trust.

Discharge of trustee where no appointment is made.

On the other hand, where no new trustee is appointed, a trustee cannot be discharged under s. 39 unless there will be a trust corporation or at least two trustees left to perform the trust, even though a sole trustee (individual) might have given valid receipts for capital.

N. T. (*future Will Trustees*), of the 5th part, and the said C. T. and N. L. (*future Trustees of the Settled Legacy*), of the 6th part : WHEREAS :—

Will.

(1) *Recite Will bequeathing legacy (hereinafter referred to as the Settled Legacy) of £—— and settling same on Jane D. and her issue, then continue as in Prec.* IA *of this group down to the words* " Upon the trusts therein mentioned " (*omitting D. D. T.*), *and continue as follows:*—(that is to say), UPON TRUSTS (after satisfying the Settled Legacy) for the benefit of his son, the Appointor and his issue, And the said Will contained a power for the Appointor during his life to appoint a new trustee or new trustees thereof :

Death of testator, &c.

(2)—(4) (*Recite death, probate, assent to legacy, &c., and realisation of residue, as in Prec.* IA, *but showing that all the land, if any, has been sold*) :

Death of a trustee.

(5) The said D. T. died on the —— day of —— :

State of Trust Fund.

(6) The residuary estate of the testator (after satisfying the Settled Legacy) is now represented by the investments mentioned in the First Schedule hereto and the Settled Legacy by the investments mentioned in the Second Schedule hereto, all of which investments are now standing in the name of the said C. T. as the present trustee of the said Will :

Desire to appoint new trustee of Will and separate trustee of Settled Legacy.

(7) The Appointor is desirous of appointing the said N. T. to be a trustee with the said C. T. of the recited Will (except as regards the Settled Legacy), and also of appointing the said N. L. to act with the said C. T. as separate trustees of the Settled Legacy :

Intention to transfer investments.

(8) It is intended that (after raising and paying in proper proportions out of the investments mentioned in both Schedules hereto, the costs of and incidental to the preparation and execution hereof) as soon as practicable, the investments mentioned in the First Schedule hereto (representing the residuary estate) shall be transferred into the joint names of the said C. T. and N. T., and that the investments mentioned in the Second Schedule hereto (representing the Settled Legacy) shall be transferred into the joint names of the said C. T. and N. L. : NOW, for effectuating the aforesaid desire and in exercise of the power for this purpose conferred by the recited Will and the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of N. T. to be trustee with C. T. of the Will

1. THE Appointor hereby appoints the said N. T. to be a trustee of the recited Will of the said X. Y. (deceased) in the place of the said D. T. (deceased) and to act jointly with the

said C. T. for all the purposes of the said Will except as regards the Settled Legacy.

(except as regards the settled legacy).

2. THE Appointor hereby appoints the said N. L. to be a trustee of the recited Will as respects the Settled Legacy in the place of the said D. T. and to act jointly with the said C. T. so far as regards that Legacy.

Appointment of N. T. to act with C. T. as separate trustees of the Settled Legacy.

[3. No vesting declaration shall be implied herein by virtue of the said Act.(*x*)]

[Vesting declaration negatived.]

IN WITNESS, &c.

THE FIRST SCHEDULE.

Investments representing the Settled Residue.

THE SECOND SCHEDULE.

Investments representing the Settled Legacy.

No. IV.

APPOINTMENT *of* NEW TRUSTEES *of an* ASSENT *on* TRUST *for* SALE *made on an* INTESTACY *by the* PERSONAL REPRESENTATIVES.(*y*) (*Legal Estate.*)

THIS APPOINTMENT is made, &c., BETWEEN R. T., of., &c. (*retiring Trustee*), of the one part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the other part: WHEREAS:—

Parties.

(1) By an Assent dated, &c., and made between L. P. and L. L. P. (hereinafter called the Administrators) of the one part, and D. T. and the said R. T. (hereinafter called the Original

Assent on trust for sale by Administrators.

(*x*) It is assumed in this Precedent that there is no property to which a vesting declaration would apply, but it may be expedient to omit this clause.

Vesting declaration.

(*y*) An intestate's estate is held on trust for sale when he dies after 1925: Ad. of E. Act, 1925, s. 33; the administrators can assent to the land vesting in themselves on trust for sale, but such an assent would usually be postponed till they could make over the property. If an appropriation of land were made by them (*quâ* trustees for sale) under L. P. Act, 1925, s. 28 (4), see *ib.*, s. 33, for the benefit of an infant, it would be held on trust for sale, but they would usually retain the land as administrators till the infant attained twenty-one. They might (as in the text) assent to land vesting in not more than four of the intestate's children on trust for sale who had become entitled in undivided shares under Ad. of E. Act, 1925, s. 46 (see also L. P. Act, 1925, s. 3 (1) (ii) proviso). This could be done during the lifetime of the spouse entitled to a life interest in a moiety if an appropriation were made under *ib.*, s. 41.

Assents on trust for sale by administrators.

Appropriation.

Again, a person absolutely entitled under the intestacy might have conveyed his equitable interest to trustees on trust for sale; they could, when administration was sufficiently advanced, call on the administrators to assent to the land vesting in them on trust for sale. Joint tenants will generally hold on trust for sale.

Derivative title.

Trustees) of the other part, the Administrators (as the personal representatives of the late X. T., who died intestate on —— and to whom Letters of Administration were granted on —— by the —— Probate Registry), assented to the freehold and leasehold properties therein described vesting in the Original Trustees, UPON TRUST to sell the same (with power to postpone the sale) and to stand possessed of the net proceeds of sale and other money applicable as capital and of the net rents and profits until sale, upon the trusts therein referred to [*These can be by reference to an Appropriation Deed or a Settlement, or if the Original Trustees were solely and beneficially entitled, a trust can be declared for them in the Assent itself, according to their interests, and additional powers can be conferred on the trustees*]; And by the said Assent it was declared that the statutory power to appoint new trustees was applicable thereto :

Power to appoint.

Death of trustee.

(2) The said D. T. died on (*date*) :

Desire to appoint.

(3) The said R. T. is desirous of retiring (*z*) from the trusts of the recited Assent and of appointing the New Trustees to be trustees thereof in place of himself and the said D. T., deceased : NOW, for effectuating the said desire and in exercise of the powers for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees.

1. THE said R. T. hereby appoints the New Trustees to be trustees of the recited Assent in the place of the said R. T. (who retires from the trust) and of the said D. T., deceased, for all the subsisting purposes of the said Assent.

Vesting declaration.

2. THE requisite vesting declaration shall be implied herein pursuant to section forty of the said Act.

IN WITNESS, &c.(*a*)

Reason for retiring.

(*z*) He may, if he were a beneficiary, have sold his undivided share in the proceeds of sale, hence his desire to retire. In any case, at least two individuals or a trust corporation are required to execute the trust for sale or exercise the statutory powers for the purposes of any transaction in which capital arises : L. P. Act, 1925, s. 27 (2), as amended.

Misconception of position of absolute owners who hold on trust for sale.

(*a*) There is nothing in the new legislation which prevents absolute owners holding on trust for sale, whether they are beneficially entitled to the proceeds as joint tenants or as tenants in common, from raising money on mortgage of the land for their own purposes, or doing anything else they think fit with it, provided they do not vest the legal estate in more than four trustees and do not purport to create undivided shares in the land.

Reason for giving additional powers.

The reason why, in such cases, it is expedient to give the trustees for sale powers in addition to those conferred by L. P. Act, 1925, s. 28, is that the trustees may not always remain the sole beneficial owners of the proceeds of sale, for instance, one of them may die, or assign or charge his beneficial interest

No. V.

APPOINTMENT *of a* TRUST CORPORATION *to be a* NEW TRUSTEE *of a* TRUST *for* SALE *to convert the* TRUST *into a* SPECIAL OVER-REACHING TRUST *for* SALE *in accordance with* L. P. ACT, 1925, s. 2 (2), *as amended.*(*b*) (*Legal Estate.*)

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c., and C. B., his wife (hereinafter called the Appointors), of the Parties.

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in the proceeds of sale, then the trustees for the time being will still be able to exercise the additional powers without disclosing the dealings with the equitable interests.

Rights of persons absolutely entitled to the proceeds of sale.

Again, if the beneficial interests in the proceeds of sale are vested absolutely in persons *sui juris*, though they or some of them do not happen to be the trustees for sale, they can, subject to the above restrictions, do what they think fit. For instance, by a powers deed, they can confer any additional powers which may be thought expedient on the persons who hold the legal estate on trust for sale.

Object of trust for sale.

The object of a trust for sale is not to fetter dealings, but to give over-reaching powers to the trustees and to secure that dealings with undivided shares should take place behind the trust for sale.

Rights of beneficiaries.

The trustees for sale are bound to give effect to the equitable interests in accordance with L. P. Act, 1925, s. 3, provided that they have notice of them. It was unnecessary to amend L. P. Act, 1925, s. 36 (see L. P. (Amend.) Act, 1926, Sch.), by declaring that a surviving trustee for sale who was absolutely entitled to the proceeds of sale could deal with the land as if it were not subject to a trust for sale; he was in a position to terminate the trust for sale at any time. Still the amendment removed a doubt, however unfounded.

Rights of purchasers of legal estates.

A purchaser, for his own "safety and protection," has a right to assume that a trust for sale of land is subsisting till the land is conveyed to or under the direction of the persons interested in the proceeds: L. P. Act, 1925, s. 23; this has been the law since 1911, and probably only confirmed the general law.

Right to keep the equitable interests off the title.

Again, under s. 42, a purchaser has a right to require title to be made under a trust for sale or under the powers given to trustees for sale if the transaction can, in this way, be effected without bringing the equitable interests on the title, but the Acts do not give a purchaser a right to refuse a title because, in order to carry out the transaction, equitable interests *must* be brought on the title, though it is true that this will seldom happen.

(*b*) This sub-section, as amended by L. P. (Amend.) Act, 1926, runs thus:—

Special trust for sale.

"(2) Where the legal estate affected is subject to a trust for sale, then, if at the date of a conveyance made after the commencement of this Act, under the trust for sale or the powers conferred on the trustees for sale, the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or one part, and the X. Bank Limited, whose registered office is at — (hereinafter called the Bank), of the other part: WHEREAS:—

Seisin of joint tenants on the statutory trusts.

(1) The Appointors, under a Deed dated, &c. (hereinafter called the Conveyance) [*or otherwise refer to the instrument of acquisition if any*] are beneficially seised of the properties mentioned in the First Schedule hereto as joint tenants in fee simple, subject to the equitable interests mentioned in the

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(b) a trust corporation;

any equitable interest or power having priority to the trust for sale shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale."

Non-over-reachable interests.

General equitable charge is over-reachable.

The equitable interests so capable of being over-reached are cut down by sub-s. (3), they do not include a mortgage by deposit, a restrictive covenant, an equitable easement, an estate contract, or an interest registered under the L. C. Act, 1925, other than an annuity or a limited owner's or a general equitable charge. A general equitable charge does not include a charge arising or affecting an interest arising under a trust for sale or a settlement: *ib.*, s. 10, Class C (iii); hence charges affecting the proceeds of sale cannot be effectively registered.

No longer confined to trusts for sale *ad hoc*.

It is no longer correct to refer to s. 2 (2) as merely authorising a trust for sale *ad hoc* to be created; this can still be done, but the sub-section now applies to any trust for sale created subject to an equitable interest which it is desired to overreach, and which can be overreached when the requirements are complied with.

Undivided shares.

Family charges.

Public Trustee.

Vesting in S. L. Act trustees after 1925, on trust for sale.

Where under L. P. Act, 1925, 1st Sch., Pt. IV, the entirety of land vests in trustees, personal representatives, or S. L. Act trustees on trust for sale, this trust takes effect in priority to incumbrances formerly affecting the undivided shares. Moreover, para. 1 (3) has been amended to make it clear that the trust for sale on which the S. L. Act trustees hold the land will take effect free from any interests, powers and charges subsisting under the settlement which had priority to the interests of the tenants in common. It follows that when the Public Trustee takes under para. 1 (4) his trust for sale will have the same overreaching effect; trustees for sale appointed in his place are in the same position.

Where L. P. Act, 1925, s. 2 (2), need not be complied with.

Where land, formerly settled, becomes subject to a trust for sale by reason of a trust for persons in undivided shares, then under S. L. Act, 1925, s. 36 (2), the trust for sale takes effect free from the interests, powers and charges subsisting under the settlement which had priority to the interests of the tenants in common.

The result is that, in the above cases, it is not necessary that the trustees should be appointed or approved by the court; it is sufficient if L. P. Act, 1925, s. 27 (2), as amended, is complied with, to enable the equitable interest to be overreached.

Giving effect to interests which are overreached.

The trustees for sale have to give effect, by means of the proceeds of sale, &c., to the interests which are overreached, provided they have notice of them, whether they were created before or after the trust for sale, according to their priorities: *ib.*, s. 3 (1) (b) (i).

Second Schedule hereto,(c) but otherwise free from incumbrances, and hold the said properties on the statutory trusts.

Desire to appoint trust corporation to be new trustee.

(2) In order to comply with sub-section (2) of section two of the Law of Property Act, 1925 (as amended), the Appointors are desirous of retiring from the said statutory trusts and of appointing the Bank to be a trustee thereof in their place:

NOW, in exercise of the power for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

1. THE Appointors hereby appoint the Bank to be a Trustee of the Conveyance for the purposes of the said statutory trusts in relation to the properties mentioned in the First Schedule hereto and in relation to any other lands so held by the Appointors, subject to the equitable interests mentioned in the Second Schedule hereto or to any of such interests, and in place of the Appointors, who retire from the said trusts.

Vesting declaration.

2. THE requisite vesting declaration shall be implied herein pursuant to section forty of the Trustee Act, 1925.

IN WITNESS, &c.(d)

THE FIRST SCHEDULE.

Particulars of the properties held by the Appointors on trust for sale.

(*To contain these particulars.*)

THE SECOND SCHEDULE.

Particulars of the Equitable Interests affecting the properties mentioned in the First Schedule or parts thereof.

Trust for sale puts an end to a "settlement" and the land ceases to be "settled land."

(c) Unless an express trust for sale has been created, it must be seen that the equitable interests are not family charges within S. L. Act, 1925, s. 1 (1) (v), for then the estate owners would be in the position of tenants for life: *ib.*, s. 20 (1) (ix), also the equitable interests must not be within the exceptions in L. P. Act, 1925, s. 2 (3). It is assumed that the land became subject to a trust for sale under *ib.*, s. 36 (1) (beneficial joint tenants), that does not subject "settled land" to a trust for sale, but if the absolute owners convey land, subject to family charges, to trustees for sale, that puts an end to the "settlement" and the land ceases to be "settled land"; see next Precedent and notes thereto. Settled land, whether held by two or more owners, is excepted from the operation of s. 36.

Stamp.

(d) The Inland Revenue only claim a 10*s*. stamp. It will be expedient to endorse notice of this appointment on one of the documents of title relating to the legal estate in the land.

No. VI.

CONVEYANCE *to a* Trust Corporation *on* Trust *for* Sale *by an* Absolute Owner *subject to* Family Charges *so as to put an end to the* Settlement,(*e*) *but to authorise the* Trustee *to over-reach the* Family Charges. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Estate Owner), of the one part, and the X. Bank Limited, whose registered office is at —— (hereinafter called the Bank), of the other part: Whereas:—

Conveyance before 1926 subject to family charges.

(1) By a Deed (hereinafter called the Conveyance) dated, &c., and made, &c., in consideration of the sum of £——, the freehold properties mentioned in the Schedule hereto (with other properties) were conveyed to the Estate Owner in fee simple, subject to the family charges mentioned in the Second Schedule hereto, but otherwise free from incumbrances; And the Conveyance contained a covenant by the said —— (*the vendor*) with the Estate Owner to keep him and the persons deriving title under him and the properties thereby conveyed effectually indemnified against all claims in respect of the said family charges:(*f*)

Indemnity.

Desire to create special trust for sale.

(2) In order to comply with sub-section (2) of section two of the Law of Property Act, 1925 (as amended), the Estate Owner is desirous of vesting the said properties in the Bank on the trusts hereinafter appearing:

NOW, in consideration of the premises, THIS DEED WITNESSETH as follows:—

Conveyance on trust for sale.

1. The Estate Owner, As Settlor, hereby conveys unto the Bank:

All the properties and rights mentioned in the First Schedule hereto; Together with the benefit of the covenant for indemnity contained in the Conveyance so far as it affects the premises:

(*e*) This Conveyance complies with the requirements of L. P. Act, 1925, s. 2 (2), as amended, see notes to last Precedent; hence the trust corporation will be able to over-reach the family charges. The settlement terminates when the land is made subject to a trust for sale: L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, ss. 1 and 3.

S. L. Act trustees of compound settlement made unnecessary.

The creation of a special trust for sale renders it unnecessary for the estate owner to apply to the court for the appointment of S. L. Act trustees of the compound settlement, consisting of the instruments creating the original settlement and the conveyance on sale to him; only so much of the land as is intended to be sold, &c., need be made subject to the trust for sale. The stamp will be 10*s.*; no beneficial interest is created or transferred.

Stamp.

Rights of absolute owner subject to family charges.

(*f*) Though the estate owner takes the position of a tenant for life: S. L. Act, 1925, s. 20 (1) (ix), he can, in right of his legal estate, create legal mortgages for his own purposes: L. P. (Amend.) Act, 1926, s. 1; he can convey the legal estate on trust for sale subject to the family charges: *ib.*

To hold unto the Bank in fee simple, Upon trust, with the consent of the Estate Owner during his life and after his death, at the discretion of the Bank to sell the premises, with power to postpone the sale of the whole or any part thereof.

Trusts of proceeds of sale.

2. (1) The Bank shall stand possessed of the net proceeds of sale and any other capital money arising under the statutory powers affecting the premises and of the net rents and profits until sale, Upon such trusts (if any) as may be requisite for giving effect to the Family Charges mentioned in the Second Schedule hereto according to their priorities, having regard to the indemnity aforesaid, until the same shall cease or be discharged and in exoneration so far as may be of the other properties comprised in the Conveyance, and subject as aforesaid, In trust for the Estate Owner absolutely :

(2) Provided that until any claim shall be made in respect of the said Family Charges the net proceeds and other capital money aforesaid shall be invested and dealt with generally in accordance with the directions of the Estate Owner or the persons deriving title under him, and the net rents, profits, and income shall (without prejudice to the said Family Charges) be paid to him or them.

[(3) *Add power for the Bank to charge remuneration in accordance with their form.*]

Power to remove and appoint trustees.(g)

3. (1) The Estate Owner during his life shall have power by deed to remove any trustee hereof :

Provided that so long as the said Family Charges, or any of them, remain subsisting, a trustee shall not be removed under this power save for the purpose of appointing a trust corporation or two or more individuals approved by the court to be trustees hereof.

(2) The Estate Owner during his life shall have power to appoint new trustees hereof.

In witness, &c.

The First Schedule.

Particulars of the properties hereby conveyed.

The Second Schedule.

Particulars of Family Charges.

Removal of trustees.

Remuneration.

(g) As to the effect of a power to remove trustees : T. Act, 1925, s. 36 (2). The court has power to authorise a trust corporation appointed by it to charge remuneration : *ib.*, s. 42.

GROUP C.—APPOINTMENTS OF NEW OR ADDITIONAL TRUSTEES IN SPECIAL CASES UNDER THE NEW LAW AND ASSENTS, &C., IN RELATION THERETO.

NO. I.

APPOINTMENT *by a sole* PERSONAL REPRESENTATIVE *of an* ADDITIONAL S. L. ACT TRUSTEE *to act with him pursuant to S. L. Act*, 1925, *s.* 30 (3), *and of* TRUSTEES *of an* INFANT'S *property.* (*Equitable Interests.*)(*a*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN P. R., of, &c. (*the executor or administrator*) (hereinafter called the Appointor), of the one part, and N. T., of, &c. (hereinafter called the New Trustee), of the other part: WHEREAS:—

Will devising land to an infant before 1926.

(1) X. Y., late of, &c. (hereinafter called the Testator), duly made his Will dated, &c., and thereby, after appointing the Appointor to be his executor (but without expressly appointing any trustees for the purposes of the Settled Land Acts, 1882 to 1890, or otherwise) devised his freehold estate known as —— in the County of —— to his infant son, John Y. (who was born on ——) in fee simple (being the only real estate of the Testator) and after bequeathing certain legacies (which have been discharged) bequeathed his residuary personal estate (which did not include any chattels real) to the said John Y. absolutely:(*b*)

(*a*) The legal estate in the settled land must be transferred by a Vesting Assent, after the appointment is made, to the tenant for life, or during a minority, to the statutory owners, who will be the appointor, and the new trustee.

Infants entitled under intestacies.

An infant cannot become entitled under an intestacy to land as "settled land," where the intestate dies after 1925, see notes to next precedent; but where the infant's title accrued before 1926, then S. L. Act, 1925, s. 1 (2), applies, and the letters of administration become the "settlement." The administrators (if any) become the S. L. Act trustees: *ib.*, s. 30 (3), and also the "statutory owners": *ib.*, s. 26. If the legal estate was vested in the administrators it will remain in them. If, on 1st January, 1926, the legal estate was vested in the infant, it will be transferred to the administrators, if any: L. P. Act, 1925, 1st. Sch., Pt. II, para. 5; Pt. III, para. 1; S. L. Act, 1925, 2nd Sch., para. 3. If there is only one administrator he must appoint another trustee before he assents. If there are no administrators then the legal estate vests in the Public Trustee till new trustees are appointed in his place, see Prec. IIIA, *infra*.

Power to appoint trustees of infant's property.

(*b*) This brings into force Ad. of E. Act, 1925, s. 42, as no trustees were interposed. This section also authorises the appointment of S. L. Act trustees, and the personal representative may appoint himself. There must be not less than two trustees or a trust corporation to act. The trustees must not exceed four in number.

(2) The Testator died, &c. (*before 1926*) without having revoked or altered his said Will, which was on —— duly proved by the Appointor at the —— Probate Registry :

Death and probate.

[(1) X. Y., late of, &c. (hereinafter called the Intestate) being at his death entitled to certain freehold properties in the County of —— died a Widower on —— (*before 1926*) intestate, leaving his infant son John Y. (who was born ——) his heir-at-law and sole next-of-kin :

[Variations for an intestacy.]

(2) On the —— (*date*) Letters of Administration to the estate of the Intestate were granted to the Appointor by the —— Probate Registry :]

(3) All the debts, funeral and testamentary [administration] expenses (including death duties) of the Testator [Intestate] have been duly discharged, and his estate is now represented by the said freehold properties and the chattels, money and investments mentioned in the Schedule hereto :

Payment of debts, &c.

(4) The Appointor is desirous of appointing the New Trustee to be a trustee of the said estate to act with himself for the purposes hereinafter mentioned :

Desire to appoint a trustee.

(5) By a Vesting Assent bearing even date with but intended to be executed immediately after this Appointment, and made between the same parties and in the same order, the Appointor assented to the said freehold properties vesting in himself and the New Trustee in fee simple as statutory owners Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held from time to time by virtue of the recited Will or otherwise [*or* by virtue of the settlement which under sub-section (2) of section one of the Settled Land Act, 1925, is deemed to have been made by the Intestate or otherwise]; And it was thereby declared that the Appointor and the New Trustee were the trustees of the settlement for the purposes of the Settled Land Act, 1925 :

Vesting assent in favour of statutory owners.

(6) It is intended that the Appointor shall, as soon as possible after discharging thereout the costs of and incidental to this Appointment and the recited Vesting Assent, transfer the balance of the investments and money mentioned in the Schedule hereto into the joint names of the Appointor and the New Trustee :

Intention to transfer investments.

NOW, pursuant to sub-section (3) of section thirty of the Settled Land Act, 1925, and in exercise of the powers for this purpose conferred by section forty-two of the Administration of Estates

Act, 1925, and by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment of S. L. Act trustee.

1. THE Appointor hereby appoints the New Trustee to act jointly with himself (the Appointor) as trustees of the Settlement [created by the recited Will] [deemed to have been made by the Intestate] in respect of the said freehold properties [and any other real estate and chattels real subject to the trusts of that Settlement] for all the purposes of the Settled Land Act, 1925, including the statutory provisions for the management of land during a minority.(*c*)

Appointment of trustees of infant's property.

2. THE Appointor hereby appoints himself and the New Trustee to be trustees of [the property comprised in the recited devise and of the residuary estate of the Testator] [the estate, whether real or personal, of the Intestate] to be held in trust for the infant, the said John Y. as aforesaid.(*d*)

Vesting declaration.

3. THE requisite vesting declaration (*e*) shall be implied herein pursuant to section forty of the Trustee Act, 1925, but shall not extend to the properties vested or intended to be vested by the recited Vesting Assent.

IN WITNESS, &c. [*Add Schedule of investments and money to be separately transferred.*]

No. II.

APPOINTMENT *of* TRUSTEES *for* SALE *of land to the proceeds of which* INFANTS *became contingently entitled after* 1925, *under an* INTESTACY.(*f*) (*Equitable Interests.*)

Parties.

THIS APPOINTMENT is made (*date*) BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Appointors), of

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Management during minority.

(*c*) For these statutory provisions, see S. L. Act, 1925, s. 102. The T. Act, 1925, s. 36 (6) (b), also gives power for a sole trustee to appoint additional trustees.

Fee simple of infant cut down to entailed interest, when.

(*d*) Where an infant dies after 1925, without having been married, his beneficial fee simple in freeholds or his absolute interest in property, settled to devolve therewith, or in freehold land to which he would have been entitled under a settlement or a Will, is cut down to an entailed interest, so that it will revert to the settlor or devolve as part of the testator's estate: Ad. of E. Act, 1925, s. 51 (3).

Purposes of vesting declaration.

(*e*) The vesting declaration will only be required in regard to chattels and things in action. All land should be included in the Vesting Assent. Any mortgages should be transferred separately.

Rights under intestacies accruing after 1925.

(*f*) Where the intestate dies after 1925, his estate is held on trust for sale: Ad. of E. Act, 1925, s. 33; even if the intestate was a lunatic of full age, on 1st January, 1926, only the beneficial interest in the real estate (excluding the 1st part, N. T., of, &c. (hereinafter called the New Trustee), of the 2nd part, the said P. R. R. (hereinafter called the Retiring Trustee) of the 3rd part, and the said P. R. and the New Trustee (hereinafter together called the Trustees) of the 4th part: WHEREAS:—

Intestacy after 1925.

(1) James R., late of, &c. (hereinafter called the Intestate), died intestate on —— (*date*) leaving at his death his widow, Jane R., and four children, all being infants, namely (*set out names and dates of birth*), none of whom has married:

Administration.

(2) On the —— (*date*) Letters of Administration were (with the consent of the said Jane R.) granted to the Appointors (the two brothers of the Intestate) by the —— Probate Registry in respect of the estate of the Intestate:

Payment of debts, &c.

(3) All the funeral and administration expenses (including death duties payable out of capital) and debts of the Intestate have been discharged, the personal chattels and the sum of £1,000 mentioned in section forty-six of the Administration of Estates Act, 1925, have been handed over and paid to the said Jane R., and the residuary estate of the Intestate is now represented by the real and personal estate mentioned in the two Schedules to the Deed of Appropriation and Partition next hereinafter mentioned:

Deed of Appropriation and Partition.(g)

(4) By a Deed of Appropriation and Partition dated, &c., and made, &c., the Appointors in exercise of the powers conferred by section forty-one of the Administration of Estates Act, 1925, and section twenty-eight of the Law of Property Act, 1925, and of all other powers and with the requisite consents, appropriated

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Lunatic intestate.

Trust for sale.

Appointments under s. 42, when available.

Appropriation under Ad. of E. Act.

Partition under L. P. Act.

chattels real) passes to the heir-at-law: *ib.*, s. 51 (2); in place of the statutory next-of-kin under s. 46; thus, though the heir may take beneficially, this does not defeat the trust for sale implied by s. 33. The personal representatives cannot appoint trustees under s. 42 unless the infant is absolutely entitled, but when they become trustees for sale (administration being completed), *semble*, T. Act. 1925, ss. 36 and 37, apply. They can appropriate land or other property in or towards satisfaction of an infant's share: *ib.*, s. 41; this does not discharge the trust for sale: *ib.*, sub-s. (6). Similarly the power (L. P. Act, 1925, s. 28 (3), (4)) to partition land among persons entitled to the proceeds of sale is exercisable by personal representatives holding on trust for sale: *ib.*, s. 33; where land is retained for an infant it will be held on trust for sale: *ib.*, s. 28 (4).

Number of representatives.

Additional representatives.

Where an infant is interested under an intestacy either a trust corporation or not less than two individuals will be granted administration: Jud. Act, 1925, s. 160 (replacing Ad. of E. Act, 1925, s. 12). Additional representatives can be subsequently appointed by the court: *ib.*

Raising the £1,000 and redemption of life interest.

(*g*) As to raising the £1,000 payable to the widow, and as to redeeming her life interest, see Ad. of E. Act, 1925, s. 48. The children do not take absolute interests till they attain twenty-one or marry: *ib.*, s. 47.

the real and personal estate mentioned in the First Schedule thereto as representing the moiety in the residuary estate in respect of which the said Jane R. was to take a life interest and appropriated the real and personal estate mentioned in the Second Schedule thereto as representing the moiety to be held on trusts for the benefit of the said four children free from such life interest; And the Appointors thereby agreed to stand possessed of the properties so appropriated Upon trust for sale, conversion and otherwise in accordance with the provisions of the Administration of Estates Act, 1925:

Desire to retire and appoint new trustee.

(5) The Retiring Trustee is desirous of retiring from the trusts aforesaid, and the Appointors (*h*) are desirous, with the consent of the said Jane R. (which has been given under her hand), of appointing the New Trustee in his place in manner hereinafter appearing:

Assent on trust for sale.

(6) By an Assent bearing even date with but intended to be executed immediately after this Appointment, and made between the Appointors of the one part and the Trustees of the other part, the Appointors as the Personal Representatives of the Intestate, assented to the vesting of the real estate and chattels real, mentioned in the First and Second Schedules thereto (being the real estate and chattels real respectively mentioned in the corresponding Schedules to the said Deed of Appropriation) in the Trustees UPON TRUST to sell the same (with power to postpone the sale), and to stand possessed of the net proceeds of sale, and other capital money arising under their statutory powers, and the net rents and profits of the premises until sale, Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held, having regard to the said intestacy and Deed of Appropriation:

Intention to transfer investments.

(7) It is intended, as soon as possible after the execution hereof, that the money and investments mentioned in the Schedules to the said Deed of Appropriation should, after deducting thereout (in the proper proportions) the costs of and incidental to the said Deed of Appropriation, the said Assent and this appointment be transferred into the joint names of the Trustees:

NOW, for effectuating the said desire and in exercise of the power for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

(*h*) A retiring trustee can join in an appointment if willing to do so: T. Act, 1925, s. 36 (8).

1. THE Appointors hereby appoint the New Trustee to be a trustee of the said Deed of Appropriation, and generally for the purposes of the trusts affecting the estate of the Intestate in the place of the Retiring Trustee, and to act jointly with the said P. R. (*continuing Trustee*), for all the purposes aforesaid : Appointment of new trustee.

2. THE requisite vesting declaration shall be implied herein but shall not extend to the real estate and chattels real comprised or to be comprised in the said Assent. Vesting declaration. (*i*)

IN WITNESS, &c.

No. IIIA.

APPOINTMENT *of* NEW TRUSTEES *by* PARENTS *in place of the* PUBLIC TRUSTEE *in whom the* LEGAL ESTATE *of an* INFANT *has become vested.*(*j*) (*Legal Estate.*)

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c., and Jane B., his wife (hereinafter called the Appointors), of the one part, and X. T., of, &c., and Y. T., of, &c. (hereinafter called the New Trustees), of the other part : WHEREAS :— Parties.

(1) By a Deed (hereinafter called the Settlement) dated, &c. (*date before 1926*), and made, &c., the freehold properties mentioned in the Schedule hereto were limited TO THE USE of R. B. (who died ——, *date before 1926*) during his life with remainder TO THE USE of John B., an infant (who was born Settlement.

(*i*) If there are no things in action subject to the trust besides the investments and mortgages intended to be separately transferred the vesting declaration can be negatived, but this is not recommended.

(*j*) In default of S. L. Act trustees the legal estate of an infant, to which he was beneficially entitled on 1st January, 1926 (the estate not being vested in personal representatives), vests in the Public Trustee till trustees of the settlement are appointed in his place by the parents or parent or testamentary or other guardian ; they may request him to act as S. L. Act trustee ; if no appointment is made, and the Public Trustee is not requested to act, the legal estate revests in the infant when he attains full age : S. L. Act, 1925, 2nd Sch., para. 3 ; see also *ib.*, s. 1 (2), as to settlements deemed to have been made where an infant is beneficially entitled to a legal estate. These vesting provisions are explained by L. P. Act, 1925, 1st Sch., Pt. III, para. 1, see also Pt. II, para. 5. The vesting provisions (compare L. P. Act, 1925, s. 7 (1)) apply though the estate of the infant may be liable in equity to be cut down by Ad. of E. Act, 1925, s. 51 (3), to an entailed interest, see the words " at the commencement of this Act," in S. L. Act, 1925, 2nd Sch., para. 3 (1). This paragraph applies where infants are entitled jointly, but not where an infant is entitled jointly with a person of full age, nor where, if he was of full age, he would be a co-tenant for life with a person of full age : *ib.*, para. 3 (5) and (6). The trustees, when appointed, must execute a principal vesting deed, see next precedent : *ib.*, para. 3 (4). Vesting of infant's legal estate. Revesting in infant on attaining twenty-one. Conversion into entailed interest. Vesting deed.

——, being a son of the Appointors), in fee simple, but no trustees for the purposes of the Settled Land Acts, 1882 to 1890, were ever appointed of the Settlement, nor were any persons appointed under section sixty of the said Act of 1882 to act (*k*) on behalf of the said John B. for any purpose :

[Will.]

[*or* (1) R. B. (having made his Will, dated —— (*date before 1926*), whereby he devised and bequeathed the freehold and leasehold properties mentioned in the Schedule hereto to his nephew John B. (an infant who was born ——, being a son of the Appointors), in fee simple or absolutely, and whereby he appointed X. to be his sole executor, but without having appointed any trustees for the purposes of the Settled Land Acts, died on —— (*date before 1926*), and his said Will was on —— duly proved by the said X., at the —— Probate Registry :

[Conveyance by executor.]

(2) By a Conveyance dated, &c., and made between the said X. of the one part, and the said John B. of the other part, the said freehold and leasehold properties were conveyed to the said John B. in fee simple or absolutely :

[Death intestate of executor.]

(3) The said X. died intestate on (*date before 1926*), and no representatives were ever appointed in respect of the estate of the said testator.](*l*)

Vesting in the Public Trustee.

(2) [*or* (4)] In the events aforesaid the said freehold [and leasehold] properties on the 1st January, 1926, vested in the Public Trustee by virtue of the Second Schedule to the Settled Land Act, 1925 :

Desire to appoint.

(3) [*or* (5)] The Appointors as the parents of the said John B. are desirous of appointing the New Trustees to be trustees of the Settlement [created by the said Will], in the place of the Public Trustee (who has not been requested to act), in manner hereinafter appearing ; and it is intended that the New Trustees shall execute a principal vesting deed declaring that the said properties are vested in them :

NOW, in exercise of the powers for this purpose conferred by paragraph three of the Second Schedule to the Settled Land Act, 1925, and by the Trustee Act, 1925 and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment in place of the Public Trustee.

1. THE Appointors hereby appoint the New Trustees to be

Appointment of persons to act for infant.

(*k*) They would have become S. L. Act trustees had they been appointed : S. L. Act, 1925, 2nd Sch., para. 3 (3).

(*l*) The executor, if living, would have been a S. L. Act trustee : S. L. Act, 1925, s. 30 (3) ; the chain is broken by the executor dying intestate : Ad. of E. Act, 1925, s. 7. Had there been any S. L. Act trustee the legal estate would have vested in him.

trustees of the Settlement, [created by the said Will] and for all the purposes of the Settled Land Act, 1925, in the place of the Public Trustee, in like manner as if he had refused to act in the trust.

Vesting declaration.

2. THE requisite vesting declaration shall be implied herein pursuant to section forty of the Trustee Act, 1925.

IN WITNESS, &c.(*m*) [*Add Schedule.*]

No. IIIB.

PRINCIPAL VESTING DEED *consequential on the* APPOINTMENT *of S. L. Act trustees in respect of an* INFANT'S *Estate.*(*n*) (*Legal Estate.*)

Supplemental to appointment of trustees for an infant.

THIS VESTING DEED made, &c. (*date*), By X. T., of &c., and Y. T., of, &c. (hereinafter called the Trustees), supplemental to an Appointment of New Trustees (hereinafter called the Principal Deed), of even date herewith, made between A. B. and Jane B., his wife of the one part, and the Trustees of the other part (being an appointment in respect of a legal estate formerly vested in John B., an infant, who was born ——, in the freehold and leasehold properties mentioned in the Schedule hereto), and for giving effect to the requirements of the

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Deaths of parents, recital.

(*m*) If the father or mother or both are dead or are unable or unwilling to make the appointment, this must be recited; the recital will be conclusive evidence in favour of a purchaser; the appointment will then be made by the guardian. It is assumed that there is no express power to appoint new trustees which is available. As to the appointment of S. L. Act trustees, see T. Act, 1925, s. 64.

Vesting declaration.

Enfranchised land.

A vesting declaration is required in this case, though if the court makes the order appointing new trustees, para. 3 of the 2nd Sch. to the S. L. Act, 1925, will operate to vest the land. It is unlikely that an infant would have been admitted to copyholds (now enfranchised) when the Act took effect If this did happen the deed of appointment must be produced to the steward and the fines, &c., paid: L. P. Act, 1922, s. 129; to save these it might in some cases be worth while to obtain an order of the court; no legal estate is vested in an infant: L. P. Act, 1925, 1st Sch., Pt. II, para. 7 (g).

Intestacies.

It seems most unlikely that a legal estate acquired by an infant under an intestacy before 1926 should vest in the Public Trustee; it will generally vest in the administrators, who will be the S. L. Act trustees: S. L. Act, 1925, ss. 1 (2), 30 (3), or else in persons appointed under S. L. Act, 1882, s. 60.

(*n*) This vesting deed is made pursuant to S. L. Act, 1925, 2nd Sch., para. 3 (4), for giving effect to the requirements of that schedule, see also *ib.*, s. 13.

Variations if the Public Trustee acts.

If the Public Trustee is requested to act and accepts the trust, the parents or guardian will be made parties. the material facts relating to the title will be recited (see last Precedent), and it will be recited that they have requested the Public Trustee to accept the trust and execute the requisite vesting deed. This will refer to the settlement or Will creating the trust.

Settled Land Act, 1925, WITNESSETH and it is hereby declared as follows:—

1. THE Trustees, As Trustees, hereby declare that—

Vesting in statutory owners.

ALL AND SINGULAR the freehold and leasehold properties and rights respectively mentioned in the first and second parts of the Schedule hereto, and all other (if any) the properties and rights capable of being vested by this declaration which are now by any means subject to the limitations of the Settlement referred to in the Principal Deed, are vested in the Trustees as statutory owners as to the said freehold properties in fee simple, and as to the said leasehold properties for the residue of the terms of years for which the same are held.

Declaration of trust.

2. THE Trustees shall stand possessed of the premises Upon the trusts and subject to the powers and provisions upon and subject to which under the Settlement referred to in the Principal Deed, or otherwise the same ought to be held from time to time.

S. L. Act trustees.

3. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

4. NO additional powers are conferred in relation to the settled land.

New trustees.

5. THE statutory power to appoint new trustees is applicable.

IN WITNESS, &c. [*Add Schedule in two parts.*]

NO. IV.

APPOINTMENT *of* TRUSTEES *of an* INFANT'S *legacy pursuant to* AD. OF E. ACT, 1925, s. 42, *with a view to winding up the Estate.*(o)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Appointors), of the one part and the said P. R. and N. T., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:—

Will giving legacy to infant.

[(1) *Recite the Will giving a legacy of* £1,000 *free of duty direct to an infant,* John B. (who was born ——, *absolutely* and *showing the appointment of* "the Appointors" *as executors.*]

Payment into court.

"Authorised investments."

(o) This avoids the need for payment of the legacy into court. The executors may appoint a trust corporation or two or more individuals not exceeding four. If they think fit they may appoint themselves or any one or more of themselves, with or without other trustees, not exceeding four in all. The legacy may be retained in its existing condition or converted into money and invested in any authorised investments: Ad. of E. Act, 1925, s. 42 (1); "authorised investments" means investments authorised by the instrument, if any, creating the trust or by law: T. Act, 1925, s. 68 (1); "by law" see *ib.*, ss. 1 to 11.

[(2) *Recite death of testator and probate.*]

Death and probate.

(3) The Appointors [with the consent of the parents of the said John B.] have appropriated the investments mentioned in the Schedule hereto to answer the said legacy pursuant to section forty-one of the Administration of Estates Act, 1925 [as extended by the said Will], having previously paid the legacy duty attributable thereto out of the residuary estate of the said testator:

Appropriation.

(4) The Appointors are desirous of appointing the trustees to be trustees of the said legacy and it is intended that the investments mentioned in the Schedule hereto shall, immediately after the execution hereof, be transferred into the joint names of the Trustees to be held by them Upon the trusts and subject to the powers and provisions applicable to the said legacy:(p)

Desire to appoint.

NOW, in exercise of the powers for this purpose conferred by section forty-two of the Administration of Estates Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

1. THE Appointors hereby appoint the Trustees to be trustees of the recited Will so far as regards the said legacy so held In trust for the said John B. absolutely as aforesaid.

Appointment of trustees.

2. No vesting declaration shall be implied herein.

Vesting declaration negatived.

IN WITNESS, &c. [*Add Schedule.*]

No. V.

ASSENT *on* TRUST *for sale in favour of* FOUR *out of several beneficiaries entitled in* UNDIVIDED SHARES *by* EXECUTORS AND TRUSTEES *for sale under a* WILL.(q) (*Legal Estate.*)

THIS ASSENT is made, &c., BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Executors), of the 1st part,

Parties.

(p) The costs will come out of the residuary estate as general administration expenses.

Costs.

The statutory power of maintenance will apply if the testator dies after 1925: T. Act, 1925, s. 31; if the infant dies under twenty-one unmarried, the accumulations will devolve with the legacy to his statutory next of kin: *ib.*

Maintenance and accumulation.

The statutory power of advancement is also applicable if the testator dies after 1925: *ib.*, s. 32.

Advancement.

When the infant marries he can give valid receipts for income and accumulations: L. P. Act, 1925, s. 21.

Receipts for income.

(q) This is made pursuant to the proviso to L. P. Act, 1925, s. 3 (1) (ii), for "conveyance" includes an "assent," *ib.*, s. 205 (1) (ii). If an equitable mortgage affects the entirety the executors must first create a charge by way of legal mortgage for giving effect thereto and then assent subject to such

Equitable mortgage affecting entirety.

C. B., of, &c., D. B., of, &c., E. B., of, &c., F. B., of, &c., G. B., of, &c., and H. B., of, &c. (hereinafter called the Beneficiaries), of the 2nd part, and the said C. B., D. B., E. B. and F. B. (hereinafter called the Trustees) of the 3rd part: WHEREAS:—

Devise on trust for sale for benefit of wife and children.

(1) A. B. (hereinafter called the Testator), being at his death seised in fee simple of the freehold properties mentioned in the Schedule hereto, free from incumbrances, duly made his Will dated, &c., and thereby after appointing his wife, Jane B. (who died in his lifetime on ——) and the Executors to be his Executors and Trustees and after bequeathing certain legacies (which have been satisfied) devised his real estate and his residuary personal estate to his Trustees on the usual trusts for sale, conversion, payment of his funeral and testamentary expenses and debts (all of which have been discharged, including the estate duty payable on his death) and directed his Trustees to stand possessed of the net proceeds and his ready money on trust to invest the same as therein mentioned and hold the said investments UPON TRUST for his wife (who died as aforesaid) during her life and after her death IN TRUST for all or any his children or child living at his death who should attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares:(r)

Death and probate.

(2) The testator died on —— without having revoked or altered his said Will, which was on the —— duly proved at the —— Probate Registry by the Executors:

State of family.

(3) The testator had six children and no more, namely, the Beneficiaries, all of whom have attained full age:

Direction to assent to four of the beneficiaries.

(4) None of the Beneficiaries have charged or otherwise dealt with their undivided shares in the properties mentioned in the Schedule hereto and they have directed the Executors (testified by their signing this Assent) to make such assent (s) as is hereinafter contained:

Incumbrances affecting undivided shares.

legal mortgage. The beneficiaries cannot call on the executors to divest themselves of the legal estate in this way if any of them have incumbered their undivided shares.

Time of death of testator or intestate immaterial.

An assent on trust for sale may be given, though the testator or intestate died before 1926: Ad. of E. Act, 1925, s. 36 (12).

(r) Independently of the express trust for sale the land would be subjected to a trust for sale on account of the undivided shares: L. P. Act, 1925, s. 34 (3); 1st Sch., Pt. IV.

Notice of assent.

(s) Notice of the assent must be endorsed on the probate: Ad. of E. Act, 1925, s. 36. It is expedient in this case to disclose the beneficial interests in the recitals.

NOW, pursuant to section three of the Law of Property Act, 1925, THIS ASSENT WITNESSETH as follows:—

Assent on trust for sale.

1. THE Executors, As the Personal Representatives of the Testator, hereby assent to the vesting of—

ALL the properties and rights mentioned in the Schedule hereto and all other (if any) the real estate and chattels real held on the trusts of the said Will;

IN the Trustees in fee simple or absolutely as joint tenants UPON TRUST to sell the premises, with power to postpone the sale and to stand possessed of the net proceeds of sale and any other capital money arising under the statutory powers [as hereby extended] and of the net rents and profits of the premises until sale IN TRUST for the Beneficiaries in equal shares absolutely.(*t*)

Additional powers.

2. IN addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, the Trustees shall, in relation to the premises, have and may exercise the following powers namely—

(1) Power, &c. (*see the additional powers suggested in Settlements* (*Personal*) *and in the case of settled land Forms, Settlements* (*Real*), supra. *As the powers given by s. 28 are by reference to the S. L. Act,* 1925, *these powers will be applicable*).

New trustees.

3. THE statutory power to appoint new trustees shall apply to this Assent.

AS WITNESS, &c. [*Add Schedule of freeholds and leaseholds dividing it into parts.*]

NO. VIA.

APPOINTMENT *by the direction of members of a* SYNDICATE *of* ADDITIONAL TRUSTEES *of land vested in a sole* TRUSTEE *on a* SECRET TRUST *where it is not desired to disclose the membership of the* SYNDICATE.(*u*) (*Equitable Interests.*)

Parties.

THIS MEMORANDUM OF APPOINTMENT is made, &c.,

Declaration of beneficial trusts.

(*t*) As presumably the trusts of the Will are to be wound up at once it is expedient to re-declare the trusts; it will not then be necessary to appoint new trustees of the Will; it will be sufficient, when so required, to appoint new trustees of the assent.

Extension of powers.

As the beneficiaries are together absolutely entitled they can give the trustees any additional powers which may be desired. This will increase the number of transactions which can be carried out by the trustees without joining the other beneficiaries or without executing an additional powers deed. The additional powers may be useful if a beneficiary dies or deals with his share.

Secret trusts.

(*u*) Though the amendment in L. P. (Amend.) Act, 1926, Sch. of L. P. Act, BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Syndicate), of the 1st part, C. T. (hereinafter called the Original Trustee) of the 2nd part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part: WHEREAS:—

Supplemental to conveyances.

(1) This Memorandum is supplemental to the Conveyances (hereinafter called the Principal Deeds) mentioned in the Schedule hereto (being conveyances of divers properties to the Original Trustee) and as appears from that Schedule the purchase money in each case was provided by members of the Syndicate in the amounts or proportions mentioned in that Schedule; and accordingly the said properties were, immediately before the commencement of the Law of Property Act, 1925, held by the Original Trustee in trust for the members of the Syndicate in shares corresponding to the amounts provided by them respectively:

Implied trust for sale.

(2) By virtue of that Act the said properties became subject in the hands of the Original Trustee to a trust for sale:

Agreement to appoint trustees.

(3) The Original Trustee,(v) by the direction of the Syndicate, has agreed to appoint the New Trustees as additional trustees of the said properties on the terms hereinafter appearing: NOW, in exercise of the powers for this purpose conferred by the Trustee Act, 1925, and of all other powers, IT IS HEREBY DECLARED as follows:—

Implied trust for sale, undivided shares.

Two trustees required to make title.

1925, 1st Sch., Pt. II, para. 3, enables A, a trustee for B (a single individual or company), to make a title as beneficial owner to a purchaser without notice, notwithstanding that the legal estate may have vested in B, it does not cover the case where A (a sole trustee) holds in trust for two or more persons entitled in undivided shares. Here the land remains vested in A, but is subjected to a trust for sale: *ib.*, 1st Sch., Pt. IV. To make title to land held on trust for sale there must be either a trust corporation or not less than two trustees to give valid receipts: *ib.*, s. 27 (2), as amended, hence new trustees must be appointed. In such a case the legal estate would pass under a conveyance by the original trustee to the purchaser, and if the purchaser had no notice of the trust he would not be made answerable for any misapplication of the purchase money.

Joint beneficial owners.

If the contributories were entitled beneficially as joint tenants, though the legal estate would vest in them under 1st Sch., Pt. II, and be subjected to a trust for sale: *ib.*, s. 36, still the amendment would apply and the original trustee could make a title to a purchaser without notice.

Invalidation of trusts.

Paragraph 7 (i) of Pt. II of the 1st Sch. provides that the statutory vesting is not to invalidate a trust; where A holds in trust for B and the estate is transferred to B, that does not invalidate the trust but gives effect to it.

Deed not required to appoint new trustees.

(v) New or additional trustees can be appointed by writing under T. Act, 1925, s. 36; only when a vesting declaration or conveyance is to be used will a deed be required.

1. THE Original Trustee, by the direction of the Syndicate, hereby appoints the New Trustees to be additional trustees of the Principal Deeds in relation to the said properties and to act with the Original Trustee for all the purposes of the said trust for sale.

Appointment of additional trustees.

2. (1) THE Original Trustee shall, by a Conveyance of even date herewith, convey the said properties to himself and the New Trustees UPON TRUST to sell the same (with power to postpone the sale) and to stand possessed of the net proceeds of sale, and of any capital money arising under the statutory powers (as extended as hereinafter mentioned), and of the net rents and profits until sale Upon the trusts to be declared concerning the same by the Declaration of Trust hereinafter mentioned.

Conveyance on trust for sale to be executed.

(2) THE said Conveyance shall, in addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, contain the following powers to be exercisable by the trustees from time to time thereof, namely—

Additional powers.

(a) Power, &c. (*see the additional powers in Forms Settlements* (*Personal*) *and* (*Real*), *supra, pp.* 159, 289, *et seq*).

(3) THE statutory power to appoint new trustees shall apply to the said Conveyance and shall be exercised in accordance with the directions of the members from time to time of the Syndicate, but no reference shall be made to the Syndicate, and a purchaser or other person dealing for money or money's worth with the trustees for the time being shall not be concerned to see that the directions (if any) have been complied with.

New trustees.

3. (1) A DECLARATION of Trust of even date herewith shall be signed by the Original Trustee and the New Trustees (*w*) agreeing to stand possessed of the said net proceeds of sale, capital money, rents and profits Upon the trusts declared concerning the same by a Memorandum of even date therewith (meaning this Appointment) or such other trusts as the same ought from time to time to be held.

Declaration of Trust.

(2) THE trusts are those requisite for giving effect from time to time to the rights of the members of the Syndicate having regard to the contributions aforesaid and of the persons respectively deriving title under them or any of them.

AS WITNESS, &c.

(*w*) As the members of the syndicate will not be parties to the declaration of trust, the reference thereto in the conveyance will give no clue as to the beneficial ownership.

Secrecy maintained.

THE SCHEDULE.

Date of Conveyance.	Short particulars of property conveyed.	Amount of purchase money or other consideration.	How contributed by Members of the Syndicate.

No. VIB.

DECLARATION *of* TRUST *of proceeds of sale of* LAND *conveyed to* TRUSTEES *by a* DEED *of* EVEN DATE. (*Equitable Interests.*)

Parties.

THIS DECLARATION OF TRUST is made, &c. (*date*), BY C. T., of, &c., N. T., of, &c., and N. N. T., of, &c. (hereinafter together called the Trustees): WHEREAS by a Conveyance of even date herewith (*see next Precedent*) and made between the said C. T. of the one part and the Trustees of the other part certain properties at —— were conveyed to the Trustees on trust for sale, the net proceeds of sale and other capital money and the net rents and profits until sale to be held Upon the trusts mentioned or referred to in Declaration of Trust of even date herewith:

Conveyance on trust for sale.

NOW, the Trustees hereby agree that they will stand possessed of the premises Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held, having regard to a Memorandum (*see last Precedent*) of even date herewith (*the parties will not be mentioned*) which has also been signed by the Trustees.

AS WITNESS, &c.(*x*)

No. VIC.

CONVEYANCE *on* TRUST *for* SALE *by a* SOLE TRUSTEE *for sale* (*holding on a* SECRET *trust*) *to* HIMSELF *and* ADDITIONAL TRUSTEES *who have been separately appointed.* (*Legal Estate.*)(*y*)

Parties

THIS CONVEYANCE is made, &c. (*date*), BETWEEN C. T., of, &c. (hereinafter called the Grantor), of the one part, and the Grantor and N. T., of, &c., and N. N. T., of, &c. (hereinafter together called the Estate Owners), of the other part:

(*x*) The declaration of trust need not be under seal: L. P. Act, 1925, s. 53.

Stamp.

(*y*) Stamp 10*s*., and have the stamp adjudicated; as to conveyances to self and others: L. P. Act, 1925, s. 72; a purchaser is not concerned with the trusts affecting the proceeds of sale, &c., provided that all capital money is paid to at least two trustees or a trust corporation: *ib*., s. 27. All beneficial joint tenants hold land (not being settled or charity land) on trust for sale: *ib*., s. 36.

Conveyances scheduled.

SUPPLEMENTAL to the Conveyances (hereinafter called the Principal Deeds) mentioned in the Schedule hereto (being Conveyances on sale of certain freehold properties to the Grantor in fee simple) :

Title of estate owners.

WHEREAS the said properties now belong to the Estate Owners as joint tenants in fee simple and are liable to be held by them on the trusts hereinafter mentioned, and accordingly the Grantor has agreed to execute such conveyance as is hereinafter contained :

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Grantor, As Trustee, hereby conveys unto the Estate Owners :

ALL the premises comprised in the Principal Deeds :

TO HOLD unto the Estate Owners in fee simple, Upon the trusts hereinafter mentioned.

Trust for sale.

2. THE Estate Owners hold the premises UPON TRUST to sell the same with power to postpone the sale and shall stand possessed of the net proceeds of sale and all capital arising under the statutory powers (as hereby extended) and the net rents and profits until sale Upon the trusts and subject to the powers and provisions which, under a Declaration of Trust of even date herewith (signed by the Estate Owners) or otherwise, the same ought to be held from time to time.

Additional powers.

3. IN addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, the following powers are exercisable by the Estate Owners or other the trustees for the time being hereof in relation to the premises, namely :—

(1) Power, &c. (*These powers will correspond with those given by Prec.* VIA, *supra.*)

New Trustees.

4. THE statutory power to appoint new trustees applies to this Conveyance.

IN WITNESS, &c.(z)

THE SCHEDULE.

Date.	Parties to Conveyance.	Short particulars of property conveyed.

Form of Conveyance for purposes of secret trust.

(z) This Precedent can be adapted for the purposes of a conveyance on secret trusts ; in all such cases the land should be conveyed on trust for sale.

No. VII.

APPOINTMENT *of* ADDITIONAL TRUSTEE *for sale where a* LEGAL ESTATE *was, before* 1*st January*, 1926, *vested in an* INFANT *and a* PERSON *of* FULL AGE *absolutely and beneficially*.(*a*) (*Legal Estate.*)

Parties.

THIS APPOINTMENT is made (*date*), BETWEEN Jane B., of, &c. (hereinafter called the Appointor), of the 1st part, R. G., of, &c. (hereinafter called the Guardian), of the 2nd part, N. T., of, &c. (hereinafter called the New Trustee), of the 3rd part, and the Appointor and the New Trustee of the 4th part: WHEREAS:—

Voluntary settlement.

(1) By a Conveyance dated, &c., and made between A. B. (hereinafter called the Settlor), of the one part, and the Appointor and Mary B., an infant (who was born ——), of the other part, in consideration of his natural love and affection for his two daughters (the Appointor and the said Mary B.), the Settlor conveyed to them in fee simple the freehold properties mentioned in the Schedule hereto:

Death of settlor and appointment of guardian.

(2) The Settlor (being a Widower) died on ——, having by his Will dated, &c., appointed the Guardian to be his sole executor and guardian of his infant children, and on the —— (*date*) the Guardian proved the said Will at the —— Probate Registry:

Statutory vesting in the appointor.

(3) By virtue of paragraph 2 of Part III of the First Schedule to the Law of Property Act, 1925, the said freehold properties became vested in the Appointor (who was born ——) in fee simple upon the statutory trusts:

Desire to appoint.

(4) The Appointor and the Guardian are desirous of making such appointment as is hereinafter contained:

Infant's estates when held on trust for sale.

(*a*) This deed is made pursuant to L. P. Act, 1925, 1st Sch., Pt. III, para. 3, which vests the legal estate in the joint tenant of full age on trust for sale (*i.e.*, on the statutory trusts: *ib.*, s. 35); see also *ib.*, s. 19 (2); S. L. Act, 1925, 2nd Sch., para. 3 (5). Had the joint tenants been given life interests, the co-owner of full age would have taken the entirety as settled land, without prejudice to the infant's beneficial interest: S. L. Act, 1925, s. 19 (3), 2nd Sch., para. 3 (6); L. P. Act, 1925, 1st Sch., Pt. II, para. 5. In that case the S. L. Act trustees would execute a principal vesting deed in favour of the tenant for life of full age in accordance with S. L. Act, 1925, s. 13, and 2nd Sch.

When settled land.

Persons having power to appoint.

The sole trustee can, it seems, make the appointment under T. Act, 1925, s. 36 (6) (b), unless the power given by para. 3 to the parents or guardian "if no other person is able and willing to do so" operates as a nomination of persons to appoint new trustees "by the instrument, if any, creating the trust," for in the T. Act, 1925, "instrument" includes an Act of Parliament: *ib.*, s. 68 (5). To avoid question the guardian or parents should concur in the appointment.

NOW, in exercise of the powers for this purpose conferred by paragraph two aforesaid and by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH that the Appointor hereby appoints and the Guardian (for purposes of confirmation) hereby also appoints the New Trustee to be an additional trustee of the recited Conveyance for the purposes of the said statutory trusts and to act jointly with the Appointor for those purposes, TO THE INTENT that the legal estate (*b*) in the said freehold properties shall vest in the parties hereto of the 4th part as joint tenants in fee simple in accordance with the said paragraph.

Appointment of additional trustee.

IN WITNESS, &c. (*Add Schedule.*)

No. VIII.

APPOINTMENT *of* NEW TRUSTEES *by* PARENTS *of a trust or mortgage estate* (*formerly vested in an infant*) *in place of the* PUBLIC TRUSTEE.(*c*) (*Legal Estate.*)

THIS APPOINTMENT is made (*date*). BETWEEN A. B., of, &c., and Jane B., his wife (hereinafter called the Appointors), of the one part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the other part: WHEREAS :—

Parties.

(1) By a Deed (hereinafter called the Mortgage) dated, &c., and made between X. M., of the one part, and John B., an infant (who was born ——), of the other part, certain freehold property at ——, was conveyed to the said John B, in fee simple, by way of mortgage, for securing payment to him of the sum of £—— and interest thereon as therein mentioned :

Mortgage to infant.

[*or* (1) By a Deed (hereinafter called the Conveyance) dated, &c., and made between R. B., of the 1st part, Mary D., Spinster, of the 2nd part, and John B., an infant (who was born ——), of the 3rd part, in consideration of a marriage shortly afterwards

[Conveyance to infant on trust for sale.]

(*b*) No vesting declaration is required, the legal estate passes by virtue of the Act itself when the appointment is made.

No vesting declaration.

Being a sole trustee, the appointor could not have carried out any transaction relating to the legal estate which involved the receipt of capital money: L. P. Act, 1925, s. 27, as amended.

The stamp will be 10*s*.

Stamp.

Notice of the appointment should be endorsed on the recited conveyance.

Notice.

(*c*) This Precedent is made pursuant to L. P. Act, 1925, 1st Sch., Pt. III, para. 3. It only applies where the mortgage or trust was created before 1926. It does not bring the trusts on the title: *ib.*, para. 3 (iv); s. 113. As to purported dispositions of legal estates to infants made after 1925, see *ib.*, s. 19; they cannot be appointed to be trustees of any property: *ib.*, s. 20.

Trusts kept off the title.

Dispositions to infants after 1925.

solemnised between the said R. B. and Mary D., certain freehold property at —— was conveyed to the said John B., in fee simple, To the use of the said R. B. in fee simple, until the solemnisation of the said marriage and thereafter To the use of the said John B., in fee simple, UPON TRUST to sell the premises and to stand possessed of the net proceeds of sale on the trusts therein referred to: And the Conveyance did not contain any express power to appoint new trustees :]

Conversion of mortgage estate into a term.

(2) The estate in fee simple comprised in the Mortgage was, by virtue of the Law of Property Act, 1925, converted into a term of 3,000 years, and under Part III of the First Schedule to that Act, the said term and the mortgage debt became vested in the Public Trustee :

[Vesting in Public Trustee of trust estate.]

[*or* (2) By virtue of the Law of Property Act, 1925, the estate in fee simple comprised in the Conveyance became vested in the Public Trustee :]

Marriage of parents.

(3) The Appointors are the parents of the said John B., having been married on —— (*date*) :

Desire to appoint new trustees.

(4) The Public Trustee has not been requested to act in the matter of the Mortgage [Conveyance], and the Appointors (no other person being able and willing to do so) are desirous of appointing the New Trustees to be trustees in his place :

Appointment in place of Public Trustee.

NOW, in exercise of the power for this purpose conferred by paragraph 3 of Part III of the First Schedule to the Law of Property Act, 1925, and of all other powers, THIS DEED WITNESSETH that the Appointors hereby appoint the New Trustees to be trustees in the place of the Public Trustee for the purposes of [the Conveyance], the said paragraph in relation to the Mortgage TO THE INTENT that, by virtue of the said Act [the land comprised in the Conveyance], the said term and mortgage money (*d*) shall vest in the New Trustees Upon the trusts [and as to the said term, subject to the equities] upon [or subject to] which the same ought to be held in accordance with the said paragraph.

IN WITNESS, &c.(*e*)

(*d*) "Mortgage money": L. P. Act, 1925, s. 205 (1) (xvi).

Stamp.

(*e*) The stamp will be 10*s*. No vesting declaration or transfer is required.

Notice.

Notice of the appointment should be endorsed on the mortgage or conveyance. If the Public Trustee is requested to act and accepts the trust, notice of this should be endorsed on the mortgage or conveyance.

Infant's trust or mortgage estate becoming vested in co-owner.

Where an infant's trust or mortgage estate becomes vested in a sole co-trustee or co-mortgagee under L. P. Act, 1925, 1st Sch., Pt. III, para. 4, this and the last Precedent can be adapted.

No. IX.

APPOINTMENT *by* Disclaiming Trustees *of* New Trustees *of a* Compound Settlement *in the place of the* Public Trustee, *the property before* 1*st January,* 1926, *being vested in tenants in tail in undivided shares in possession.* (*Legal Estate.*) (*f*)

THIS APPOINTMENT is made, &c., Between R. T., of, &c., and S. T., of, &c. (hereinafter called the Appointors), of the 1st part, Mary B., of, &c., and Elizabeth B., of, &c. (hereinafter called the Tenants in Tail), of the 2nd part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part: Whereas:— Parties.

(1) As appears from the documents and facts mentioned in the First Schedule hereto the freehold properties mentioned in the first part of the Second Schedule hereto vested in the Public Trustee, by virtue of paragraph 1 (3) of the fourth part of the First Schedule to the Law of Property Act, 1925 (pending the appointment of new trustees of the Re-settlement (*g*) mentioned in the First Schedule hereto). Title in First Schedule to freeholds.

(2) The enfranchised lands and leasehold properties mentioned in the second and third parts of the Second Schedule hereto were, Title to enfranchised lands and leaseholds.

(*f*) The freeholds were "settled land" immediately before 1st January, 1926, hence come within L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3), and vest in the Public Trustee for want of S. L. Act trustees. The copyholds and leaseholds would presumably have been vested in trustees (not the disclaiming trustees), hence would be held by them on the statutory trusts: *ib.*, para. 1 (1). It would obviously be convenient to appoint those trustees to be trustees of the freeholds. Enfranchised lands and leaseholds vested in trustees.

Though para. 1 (3) speaks of "one and the same settlement," the expression "settlement" means a "compound settlement," if there is one: *ib.*, s. 1. A "settlement" may consist of two or more instruments. Meaning of "settlement."

In either case the land vests free from the jointure (unless within para. 1 (1) it is secured by a legal term, which would be unlikely). Paragraph 1 (3), as amended, only saves legal mortgages.

Where, before 1st January, 1926, tenants for life were entitled in shares and, after the cesser of their interests in the income, the entirety of the land is settled to devolve together (not in undivided shares), they are treated as joint tenants for life, no trust for sale is implied, but a vesting deed in favour of the tenants for life will be required: L. P. (Amend.) Act, 1926, Sch., amending L. P. Act, 1925, 1st Sch., Pt. IV, by adding a new paragraph. Tenants for life entitled in shares to the income remainders over of the entirety.

(*g*) The tenants in tail would have had the powers of a tenant for life: S. L. Act, 1882, s. 58. Had there been a tenant for life under an instrument the trustees thereof would have been S. L. Act trustees of the compound settlement: amendment of S. L. Act, 1925, s. 31, in the L. P. (Amend.) Act, 1926.

But the whole settlement comes to an end by reason of the trust for sale and the jointure is overreachable by the trustees for sale.

on the 1st January, 1926, and still are, legally vested in the New Trustees and accordingly are, by virtue of paragraph 1 (1) of the fourth part of the First Schedule, held by them on the statutory trusts requisite for giving effect to the rights of the jointress and the Tenants in Tail:

Public Trustee not requested to act.

(3) The Public Trustee has not been requested to act for the purposes of the statutory trusts connected with the premises nor have the Tenants in Tail incumbered or otherwise dealt with their undivided shares therein:

Desire to appoint trustees of the Re-settlement.

(4) The Appointors (who, as appears from the First Schedule hereto, were appointed to be the trustees of the Re-settlement therein mentioned for the purposes of the Settled Land Acts, 1882 to 1890, but refused to act), are desirous, at the request of the Tenants in Tail, of appointing the New Trustees to be trustees of the said Re-settlement in manner hereinafter appearing:

NOW, in exercise of the power for this purpose (*h*) conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment of trustees of the Re-settlement.

1. THE Appointors hereby appoint the New Trustees to be trustees of the Re-settlement mentioned in the First Schedule hereto in the place of the Appointors who have refused to act as aforesaid: TO THE INTENT that the said freehold properties and rights shall, by virtue of the Law of Property Act, 1925, vest (free, as in Part IV of the First Schedule to that Act is mentioned) in the New Trustees as joint tenants Upon the statutory trusts in accordance with paragraph 1 (3) (iv) of Part IV aforesaid.

Confirmatory appointment by the tenants in tail.

2. FOR the purpose of confirming the title of the New Trustees to all the real estate and chattels real, subject or formerly subject to the limitations of the Compound Settlement mentioned in the First Schedule hereto or of any instrument forming part of that Settlement, and in exercise of the powers conferred by paragraph 1 (4) of Part IV of the First Schedule to the Law of Property Act, 1925, as amended by the Law of Property (Amendment) Act, 1926, and of all other powers the Tenants in Tail (as persons interested in more than an undivided half of the land or the income thereof) hereby appoint the New Trustees to be trustees in place of the Public Trustee TO THE INTENT that the said land shall, by virtue of the said Act of 1925,

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Notice.

Stamp.

(*h*) Trustees who have decided to disclaim, or who have disclaimed, can appoint: T. Act, 1925, s. 36 (8). Notice of this appointment should be endorsed on the Re-settlement. The stamp should be £1, in view of the confirmatory appointment in clause 2.

vest in the New Trustees in the manner prescribed by the said sub-paragraph as so amended upon the statutory trusts.(*i*)

In witness, &c.

The First Schedule.

Particulars relating to the Compound Settlement and devolution of title.

18 . Under a Settlement of this date, made between, &c., and of divers dispositions, to the uses thereof, the freehold and leasehold properties (including certain enfranchised lands formerly copyhold of the Manor of ——), mentioned in the Second Schedule hereto, were charged with the payment of a yearly jointure rentcharge of £——, to Jane B., who is still living (in this Deed called the Jointress), during the residue of her life; (the other limitations have failed or determined) and there are no trustees for the purposes of the Settled Land Act, 1925, (*ii*) of this Settlement.

19 . By a Disentailing Assurance of this date, made between, &c. (duly enrolled in the Central Office and on the Court Rolls of the said Manor) the real estate and chattels real then subject to the limitations of the said Settlement were (subject to the said jointure) limited to such uses or upon such trusts as A. B. and C. B. should by deed appoint, with divers limitations over.

19 . By a Re-settlement of this date expressed to be made between the said A. B. and C. B. of the one part, and the Appointors (who in fact did not execute) of the other part, the properties then subject to the said power of appointment were limited to the use of or in trust for the said A. B. (since deceased) during his life, With remainder To the use of or in trust for the said C. B. (since deceased) during his life, With remainder (subject to a jointure rentcharge limited to Mary B., the wife of the said C. B., which failed by reason of her death on ——) To uses or upon trusts for the benefit of the first and other sons of the said C. B. (which failed by reason of his death without having had any issue male), With remainder

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(*i*) This sub-paragraph applies to any case not within (1), (2) or (3). For the "statutory trusts" see L. P. Act, 1925, s. 35. It has been amended, but the amendment does not affect this Precedent.

(*ii*) Once there are S. L. Act Trustees they or their successors remain such: S. L. Act, 1925, s. 33.

To the use of or in trust for all his daughters in tail, with cross-remainders in tail between them; And by the Re-settlement the Appointors were expressed to be appointed to be the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, but the Re-settlement only gave powers for the said A. B. and C. B. successively during their lives to appoint new trustees thereof.

19 . The said A. B. died on this date:

19 . The said C. B. (then a widower), died on this date, having had issue two children and no more, namely the Tenants in Tail, who accordingly became entitled to the said freehold properties as tenants in common in tail in equal shares, and to the said enfranchised lands (then copyholds) for similar interests or for fees simple conditional on the birth of issue (now converted into entailed interests), and as to the said leasehold properties (both of them having attained the age of twenty-one years) absolutely in equal shares:

1925. By a Deed of Disclaimer of this date, under the hands and seals of the Appointors, they disclaimed the trusts of the Re-settlement:

1st January 1926. By virtue of paragraph 1 (3) of Part IV of the First Schedule to the Law of Property Act, 1925, the said freehold properties vested in the Public Trustee pending the appointment of new trustees of the Compound Settlement:

THE SECOND SCHEDULE.

First Part.

Particulars of freehold properties.

No. on Plan.	Description.	Acreage.

Second Part.

Particulars of enfranchised lands affected by manorial incidents (to which the New Trustees had been admitted).

No. on Plan.	Description.	Acreage.

Third Part.

Particulars of leasehold properties (which had been assigned to the New Trustees).

Date of Lease.	Parties.	Property demised.	Term.	Yearly rent.

No. X.

APPOINTMENT *of* New Trustees *in place of the* Public Trustee *where the land is held in* Undivided Shares, *the appointment being made by persons interested in more than* Half *the land or the income thereof (immediately before* 1st *January,* 1926), *where the* Entirety *was* Not *vested in* Trustees *or* Personal Representatives, *or (not being settled land) was* Not *vested in* Four *persons or less absolutely and beneficially free from incumbrances affecting the* Undivided Shares, *or (being settled land) was* Not *held under* One Settlement.(*j*) (*Legal Estate.*)

Parties.

THIS APPOINTMENT is made, &c., Between A. T., of, &c., B. T., of, &c., and C. T., of, &c. (hereinafter called the X. Trustees), of the 1st part, P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Y. Representatives), of the 2nd part, B. O., of, &c., of the 3rd part, F. M., of, &c. (hereinafter called the Mortgagee), of the 4th part, the X. Trustees, the Y. Representatives and the said B. O. (hereinafter collectively called the Appointors) of

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Where persons interested in more than half the income can appoint new trustees.

(*j*) The above heading is given to show what cases come under L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (4), the excepted cases are within *ib.*, para. 1 (1), (2) or (3). For the general principles, see 1 Wolst. & Cherry, 11th ed., pp. 502–511. The consent of the mortgagees of undivided shares can usefully be given in the appointment itself, but this is not essential, for a purchaser is not concerned to see that their consent has been given. *Semble*, the consent is only required in respect of mortgages affecting the shares of the appointors, they may know nothing of the title to the other shares, but when practicable the consents of all should be obtained.

Consent of incumbrancers.

"Persons interested."

The expression "persons interested" is not confined to persons "beneficially" interested, *e.g.*, trustees for sale, or personal representatives would represent their beneficiaries: *Darlington* v. *D.* (1926), W. N. 192.

Notice.

Stamp.

Notice of the appointment should be endorsed on a document of title affecting each share of the appointors. Notice in writing should be given to the tenants in common who do not join in the appointment. No vesting declaration is required, the stamp is 10*s*.

the 5th part, and N. T., of, &c., N. N. T., of, &c., and N. N. N. T., of, &c. (hereinafter called the New Trustees), of the 6th part: WHEREAS :—

Devise before 1898 to four tenants in common.

(1) T. O. (hereinafter called the Testator), being at his death entitled to the freehold properties mentioned in the first part of the First Schedule hereto, subject to the perpetual yearly rentcharge and mortgage mentioned in the second part of that Schedule, but otherwise free from incumbrances, by his Will dated, &c., and proved on ——, devised the said properties to his four sons D. O., G. O., J. O. and B. O., in equal shares as tenants in common:

Death of testator.

(2) The Testator died on —— (*date before* 1898):

Title to the share of D. O.

(3) As appears from the first part of the Second Schedule hereto, the one-fourth share of the said D. O. (deceased), in the said properties was, immediately before the 1st January, 1926, vested in the X. Trustees on trust to sell the same:

Title to the share of G. O.

(4) As appears from the second part of the Second Schedule hereto the one-fourth share of the said G. O. (now deceased), in the said properties was immediately before the said date vested in the Y. Representatives as part of his estate:

As to the share of J. O.

(5) The said J. O. in the year ——, left the United Kingdom, and is now residing at ——, and (so far as the Appointors are aware) his one-fourth share in the said properties remained vested in him at the date aforesaid, and he has not incumbered or dealt with the same in any way:

Incumbrance on the share of B. O.

(6) As appears from the third part of the Second Schedule hereto the said B. O. had at the date aforesaid conveyed his one-fourth share in the said properties to the Mortgagee for securing payment of the sum of £——, and interest thereon, but has not in other respects dealt with his said share: (*k*)

Vesting in the Public Trustee.

(7) In the circumstances aforesaid the said properties vested in the Public Trustee in fee simple, subject to the incumbrances mentioned in the second part of the First Schedule hereto, upon the statutory trusts, but he has not been requested to act for these purposes:

Desire to appoint.

(8) The Appointors, with the consent of the Mortgagee (testified by his execution hereof), are desirous of appointing the New Trustees to be trustees in place of the Public Trustee, in manner hereinafter appearing:

NOW, in exercise of the power for this purpose conferred by paragraph 1 (4) (iii) of Pt. IV of the First Schedule to the Law

Mortgage of a share.

(*k*) As to the rights of a mortgagee of an undivided share: L. P. Act, 1925, s. 102.

of Property Act, 1925, and of all other powers, THIS DEED WITNESSETH that the Appointors (with such consent as aforesaid) hereby appoint the New Trustees to be trustees in the place of the Public Trustee, for the purposes of the statutory trusts aforesaid To THE INTENT that the land and rights mentioned in the first part of the First Schedule hereto shall, by virtue of the said Act (as amended).(*l*) vest in the New Trustees in fee simple (free as in the said Act mentioned), Upon the statutory trusts.

Appointment in place of Public Trustee.

IN WITNESS, &c.

THE FIRST SCHEDULE.

First Part.

Particulars of properties in the parishes of ——, in the county of ——.

No. on Plan.	Description.	Acreage.

Second Part.

Legal incumbrances affecting the properties mentioned in the first part of this Schedule.

1. Perpetual yearly rentcharge (*m*) of £—— reserved by a Grant dated, &c., and made between, &c.

2. Mortgage dated, &c., and made between, &c. (being a Mortgage of the fee simple now converted into a term of 3,000 years), for securing £—— and interest.

THE SECOND SCHEDULE.

First Part.

Dealings with the one-fourth share of D. O.

19 . By a Conveyance of this date made between the said D. O., of the 1st part, Jane P., of the 2nd part, and

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(*l*) See L. P. (Amend.) Act, 1926, Sch., amending para. 1 (4) (iii) of Pt. IV of the 1st Sch. to the L. P. Act, 1925.

(*m*) This is paramount to the estate taken by the new trustees, see the amendment in L. P. (Amend.) Act, 1926, Sch. of para. 1 (12) of Pt. IV of the 1st Sch. to the Act of 1925. Legal Mortgages affecting the entirety also remain paramount.

Legal rentcharge.

the X. Trustees of the 3rd part, the said one-fourth share was (in consideration of the marriage shortly afterwards solemnised between the said D. O. and Jane P.), conveyed to the X. Trustees in fee simple, To the Use of the said D. O. in fee simple, until the solemnisation of the said marriage and thereafter, To the Use of the X. Trustees in fee simple, UPON TRUST to sell the same with the consent of the said D. O. and Jane P., and the survivor of them during their lives or the life of the survivor, and after the death of both at the discretion of the X. Trustees, and to stand possessed of the net proceeds of sale on the trusts of a deed of even date therein referred to.

19 . The said D. O. died on this date.

19 . The said Jane P. (then Jane O.) died on this date.

Second Part.

Dealings with the one-fourth share of G. O.

19 . On this date the said G. O. died, having by his Will dated, &c., appointed the Y. Representatives to be his executors:

19 . On this date the Y. Representatives proved the said Will at the —— Probate Registry.

Third Part.

Dealings with the one-fourth share of B. O.

19 . By a Mortgage of this date, made between the said B. O. of the one part, and the Mortgagee of the other part, the said B. O. conveyed his one-fourth share to the Mortgagee,(n) in fee simple, by way of mortgage for securing payment of the principal sum of £—— and interest thereon at the rate of £— per cent. per annum.

Shifting of incumbrances affecting shares.

(n) This incumbrance, only affecting a share, is placed behind the trust for sale as an equitable interest to which effect must be given under L. P. Act, 1925, s. 35. Mere equitable charges (not converted into term mortgages) are on the same footing: *ib.*

Consulting beneficiaries.

As to consulting the beneficiaries, see L. P. Act, 1925, s. 26 (3), as amended.

No. XI.

APPOINTMENT *of* NEW TRUSTEES *in the place of the* PUBLIC TRUSTEE *where a* LEASE *was, immediately before 1st January,* 1926, *vested in undivided shares in* FIVE *or more persons absolutely and beneficially (free from incumbrances affecting undivided shares).*(*o*) (*Legal Estate.*)

THIS APPOINTMENT is made, &c. (*set out the names and additions of the five lessees, though it would be sufficient if those entitled to more than half were joined*) (hereinafter collectively called the Appointors) of the one part and (*set out the names and additions of not more than four or less than two new trustees; these may be selected from the beneficiaries, there is nothing to prevent the Appointors from appointing four of themselves:* L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (4) (iii); T. Act, 1925, s. 36 (1), *unless a mortgagee of a share objects*) (hereinafter called the New Trustees) of the other part: WHEREAS:— Parties

(1) By a Lease dated, &c. (*recite the lease; it is unlikely that a lessor would agree in the first instance to grant a lease to persons in undivided shares, though under the old law he could have done so*): Lease.

(2) After divers mesne assignments and acts in the law ultimately, under an Assignment dated, &c., and made, &c., the premises comprised in and demised by the recited Lease became vested in the Appointors as tenants in common in equal shares [*or otherwise according to the shares taken by each of them*], for residue of the said term at the rent reserved by and subject to the lessees' covenants and conditions contained in the recited Lease: Mesne assignments, &c.

(3) By virtue of paragraph 1 (4) of Part IV of the First Schedule to the Law of Property Act, 1925, the premises became vested in the Public Trustee on the statutory trusts, but he has not been requested to act for the purposes of those trusts: Vesting in Public Trustee.

(4) The Appointors are desirous of appointing the New Trustees to be trustees for the said purposes: Desire to appoint.

(*o*) This Prec. also applies where two or more tenants in common are absolutely entitled, but one or more of them have incumbered their shares. In this case the consent of the incumbrancers should be obtained, see last Precedent. It was always a bad practice to vest a lease in tenants in common in shares. Notice of the appointment should be endorsed on the lease. The stamp will be 10*s*. Tenants in common who have incumbered their shares. Notice.

NOW, in exercise of the power for this purpose conferred by paragraph 1 (4) (iii) of Part IV of the said Schedule (as amended by the Law of Property (Amendment) Act, 1926), and of all other powers, THIS DEED WITNESSETH that the Appointors hereby appoint the New Trustees to be trustees in the place of the Public Trustee for the purposes of the said statutory trusts To THE INTENT that the premises comprised in the recited Lease shall, by virtue of the said Act (as amended), vest in the New Trustees for the residue of the said term (free as in the said Schedule mentioned), Upon the statutory trusts. (*If the trustees are not beneficial owners they may require the latter to give the usual covenants for indemnity against the rent and covenants.*)

Appointment in place of the Public Trustee.

IN WITNESS, &c.(p)

No. XII.

APPOINTMENT *of* NEW TRUSTEES *for* SALE *in place of a* LUNATIC *or* DEFECTIVE *who had some* BENEFICIAL *interest in possession in the* LAND.(q) (*Legal Estate.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Appointor), of the one part, and N. T., of,

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Leases of shares for different terms, &c. Shares held partly freehold and partly leasehold. Powers of the court to authorise special transactions. Power to partition land held on the statutory trusts.

(p) Difficult problems arise where leases of distinct undivided shares have been granted for different terms or subject to different covenants; or where the owner held a share in the land as freeholder and other shares as lessee; in such cases the entirety would vest in the Public Trustee. The proper course would be to re-arrange the beneficial interests, and then apply to the Court under T. Act, 1925, s. 57, and L. P. Act, 1925, s. 66, for an order directing and authorising the Public Trustee, or any trustees for sale appointed in his place, to execute such assurances as may be required for giving legal effect to the scheme. The Public Trustee or other trustees for sale may have power to partition under L. P. Act, 1925, s. 28, and under *ib.*, s. 30, the court may direct the partition to be carried out or make a vesting order; see also as to vesting orders: T. Act, 1925, ss. 44–56.

New trustee must be appointed in place of a lunatic. Recital negativing beneficial interest. Tenants in common or joint tenants.

(q) A new trustee must be appointed in place of a lunatic holding on trust for sale before the legal estate can be dealt with: L. P. Act, 1925, s. 22 (2). The appointment can be made, under T. Act, 1925, s. 36 (1), in his place as being a person unfit or incapable of acting, but where he is entitled in possession to some beneficial interest in the trust property a trustee cannot be appointed in his place by the continuing trustee unless leave has been given by the Judge or Master in Lunacy: *ib.*, sub-s. (9).

Where the lunatic has no beneficial interest in possession, the appointment of a new trustee in his place must contain a statement that he has no such interest; in favour of a purchaser of a legal estate, such a statement will be conclusive evidence of the fact: *ib.*, s. 38.

He might have a beneficial interest in possession if the land vested in him and other co-tenants in common on trust for sale under L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (2), or was subjected to a trust for sale by *ib.*, s. 34 (2) and (3) (undivided shares expressed to be created after 1925), or s. 36 (beneficial joint tenancies).

&c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the other part: WHEREAS:—

(1) Immediately before the 1st January, 1926, the freehold properties mentioned in the First Schedule hereto were (subject to the legal mortgages mentioned in the Second Schedule hereto which affected the entirety or parts thereof), vested in the Appointor, and C. B., his brother, in fee simple beneficially, as tenants in common in equal shares, free from incumbrances affecting their respective shares: Title of tenants in common before 1926.

(2) By virtue of paragraph 1 (2) of Part IV of the First Schedule to the Law of Property Act, 1925, the said properties became vested (subject to the legal mortgages aforesaid which were converted into mortgages for terms of 3,000 years) in the Appointor and the said C. B., in fee simple, on the statutory trusts for sale: Vesting on trust for sale.

(3) By an Order dated (*date*), In the matter, &c. (*recite the order appointing a receiver of the property of C. B.*): Order appointing receiver in lunacy.

(4) By an Order made (*date*), In the matter aforesaid, and In the matter of the Trustee Act, 1925, section thirty-six, leave was given to the Appointor to appoint the New Trustees to be trustees of the properties mentioned in the Schedule to the said Order (being the properties mentioned in the First Schedule hereto), in the place of the said C. B., and to act jointly with the Appointor for the purposes of the statutory trusts: Order authorising new trustees to be appointed.

NOW, in exercise of the power for this purpose conferred by the Trustee Act, 1925, and of all other powers and pursuant to the last recited order, THIS DEED WITNESSETH as follows:—

1. THE Appointor hereby appoints the New Trustees to be trustees of the properties mentioned in the First Schedule hereto [and of any other real estate and chattels real, formerly held by the Appointor and the said C. B., as tenants in common as aforesaid], in the place of the said C. B., and to act jointly with the Appointor for the purposes of the statutory trusts affecting the premises. Appointment of new trustees in place of lunatic.

2. THE requisite vesting declaration shall be implied pursuant to section forty of the Trustee Act, 1925. Vesting declaration.

IN WITNESS, &c.(r)

(r) It will be expedient to endorse notice of the appointment on a document of title relating to the legal estate. Notice of the appointment should be given to the mortgagees. Notice.

THE FIRST SCHEDULE.

Particulars of freehold properties at —— in the County of ——.

No. on Plan.	Description.	Acreage.

THE SECOND SCHEDULE.

Particulars of mortgages affecting the entirety.

Date.	Parties.	Description of property charged.	Amount of mortgage debt.

GROUP D.—APPOINTMENTS OF NEW TRUSTEES OF SETTLEMENTS (REAL) CREATED BY DEED; DEEDS OF DECLARATION, &c.

No. IA.

APPOINTMENT *of* NEW TRUSTEES *of a* STRICT SETTLEMENT *of* LAND, &c., *where Trustees were appointed by the* SETTLEMENT *for the purposes of the* SETTLED LAND ACTS *or were given a* POWER *of* SALE.(*a*) (*Equitable Interests.*)

Parties. THIS APPOINTMENT is made (*date*), BETWEEN A. B., of, &c. (*donee of power*) (hereinafter called the Appointor), of the 1st part, R. T., of, &c. (hereinafter called the Retiring Trustee), of the 2nd part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part: WHEREAS:—

Settlement. (1) This deed is supplemental to a Deed (hereinafter called

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Appointment of S. L. Act trustees. (*a*) As to the appointment of S. L. Act trustees: T. Act, 1925, ss. 34 (limitation of number), 35 (2) (endorsement on principal vesting instrument). 36 and 37 (powers to appoint), 38 (evidence of vacancy), 40 (implied vesting declaration), 64 (application of Act to S. L. Act trustees); S. L. Act, 1925, s. 35 (procedure on appointment or discharge of a S. L. Act trustee and evidence of statements in deed of declaration); see also as to protection of purchasers: *ib.*, s. 110.

Memorandum. The following memorandum should be endorsed on the principal vesting deed and signed by or on behalf of the trustees:—

(*Date*) TAKE NOTICE that N. T., of, &c., and N. N. T., of, &c., are the present trustees for the purposes of the Settled Land Act, 1925, of the Settlement referred to in the [within] [above] written Vesting Instrument.

the Settlement) dated, &c., and made between the Appointor of the 1st part, F. H., Spinster (afterwards and hereinafter called F. B.), of the 2nd part, and D. T. (since deceased) and the Retiring Trustee (hereinafter together called the Original Trustees), of the 3rd part (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the Appointor and F. B.), under which and by virtue of divers dispositions to the uses or upon the trusts thereof [and of certain subsidiary Vesting Deeds] and by virtue of a Principal Vesting Deed dated, &c., and made between the Original Trustees of the one part and the Appointor of the other part, certain freehold and leasehold properties (including enfranchised lands affected by manorial incidents) situated in the Counties of ——, are now vested in the Appointor UPON TRUSTS under which he is tenant for life in possession, and whereby the Original Trustees were appointed to be trustees of the Settlement for the purposes of the Settled Land Acts, 1882 to 1890, and of section forty-two (*b*) of the Conveyancing Act, 1881 [*or* a power of sale and exchange was thereby conferred on the Original Trustees], and a term of —— years (hereinafter called the Portions Term) was limited to them without impeachment for waste UPON TRUSTS for raising portions for the younger children of the said marriage and their issue,(*bb*) And by the Settlement certain chattels were assigned to the Original Trustees to be held by them as heirlooms along with the freehold properties thereby settled and they were also directed to hold certain investments which had been separately transferred to them UPON TRUSTS as if the same were capital money arising from the said freehold properties, and were primarily liable to be laid out in the purchase of freehold land to be made subject to the Settlement; And by the Settlement the Appointor was empowered during his life to appoint new trustees thereof:

Death of trustee.

(2) The said D. T. died on —— 19—:

As to capital money.

(3) The Schedule hereto contains particulars of the investments and money standing in the name of the Retiring Trustee and now representing the only capital money for the purposes of the Settled Land Act, 1925 (not applied in the acquisition of other land or in effecting authorised improvements), remaining subject to the trusts of the Settlement:

(*b*) As to maintenance and accumulation of surplus income, see note to Prec. IIA, *infra*.

(*bb*) This would be converted into an equitable term by the vesting deed.

Desire of trustee to be discharged and for appointment of new trustees.

(4) The Retiring Trustee is desirous (as he hereby declares) of being discharged from the trusts of the Settlement and the Appointor is desirous of appointing the New Trustees to be trustees thereof in his place and in place of the said D. T. (deceased) :(*c*)

Deed of declaration.

(5) By a Deed of Declaration bearing even date with and intended to be executed immediately after this Appointment and to be made between the same parties and in the same order (supplemental to the recited Principal Vesting Deed) it was, pursuant to section thirty-five of the Settled Land Act, 1925, declared that the New Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Endorsement of notice.

(6) It is intended that a memorandum shall be endorsed on the said Vesting Deed pursuant to sub-section (2) of section thirty-five of the Trustee Act, 1925 :

Intention to transfer capital money and investments.

(7) It is intended that (after raising and paying thereout the costs of and incidental to this Appointment, the said Deed of Declaration and Memorandum) as soon as practicable the money and investments mentioned in the Schedule hereto shall be paid and transferred into the joint names of the New Trustees :

NOW, for effectuating the aforesaid desire and in exercise of the power for this purpose conferred by the Settlement and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees.

1. THE Appointor hereby appoints the New Trustees to be trustees of the Settlement in the place of the said D. T. (deceased) and of the Retiring Trustee (who retires from the trust) for all the purposes for which the Original Trustees were appointed trustees by the Settlement and for the purposes of the Settled Land Act, 1925.

Implied vesting declaration. (*d*)

2. THE requisite vesting declaration shall be implied under section forty of the Trustee Act, 1925, and shall apply to said heirlooms and all things in action subject to the trusts of the Settlement and to the equitable interest in the Portions Term

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Enfranchised lands.

(*c*) As no legal estate in land passes to the trustees, the deed has not to be produced to the steward under L. P. Act, 1922, s. 129 ; nor is it necessary to register it in any local deeds register : L. P. Act, 1925, s. 11.

Legal estate.

(*d*) The legal estate in all the settled land will be vested in the tenant for life, but the vesting declaration may be required for the purposes of the heirlooms and things in action. Where so desired it may be extended to equitable interests in land, such as portions terms (S. L. Act, 1925, 2nd Sch., para. 1 (6), as amended), though the mere appointment of the trustees would be sufficient to pass such interests.

and any other equitable interests in land which ought to be vested in the New Trustees.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of capital money and investments.

Application to vary restriction.

If any of the settled land is registered under the L. R. Act, 1925, subject to a restriction in the prescribed Form, No. 9, in the schedule to the Rules, the above deed should be accompanied by the following application to the registrar :—

H.M. Land Registry.

Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

(*Date.*) A. B., of, &c., and R. T., of, &c., hereby apply to the registrar to modify the restriction registered on the (*date*) against the title above referred to by substituting " N. T., of, &c.," and " N. N. T., of, &c.," for " D. T., of, &c.," and " R. T., of, &c."

(*To be signed by A. B. and R. T. or their solicitors, see Rule* 235 *and prescribed Form* 77.)

No. IB.

DEED *declaring the names of the* PRESENT S. L. ACT TRUSTEES *of the* SETTLEMENT, *pursuant to* S. L. ACT, 1925, s. 35, *when* NEW TRUSTEES *are to act.* (*Legal Estate.*)

Parties.

THIS DEED made (*date*), BETWEEN (*parties as in last Precedent*): Supplemental to a Vesting Deed dated, &c., and made, &c. (*the last or only principal vesting instrument*): WITNESSETH, pursuant to section thirty-five of the Settled Land Act, 1925, and it is hereby declared that the said N. T. and N. N. T. are the trustees of the Settlement for the purposes of the Settled Land Act, 1925, the said D. T. having died on (*date*) and the said R. T. having retired from the trust.

Declaration.

IN WITNESS, &c.(*e*)

(*e*) As to what statements are conclusive in favour of a purchaser of a legal estate in such a deed: s. 35 (3). As a retiring trustee joins, his admission that he has retired is sufficient.

No. IIA.

APPOINTMENT (*by the* DONEE *of the* POWER) *of* NEW TRUSTEES *of a* SETTLEMENT *of* REAL ESTATE *for general purposes and also for the purposes of the* S. L. ACT, *where* S. L. ACT TRUSTEES *have been appointed by the* COURT.(*f*) (*Equitable Interests.*)

Parties.

THIS APPOINTMENT is made (*date*), BETWEEN A. B., of, &c. (*tenant for life and donee of power*) (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (hereinafter called the Continuing Trustee), of the 2nd part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part: WHEREAS:—

Settlement.

(1) (*Recite the Settlement and the Principal Vesting Deed as in Prec.* IA, *but refer to* "the Continuing Trustee" *in place of* "the Retiring Trustee" *and state that the Settlement did not appoint any persons to be trustees or contain any power to sell the land thereby settled, and also refer to the power for the Appointor during his life to appoint new trustees thereof*):

Order appointing original trustees for purposes of S. L. Acts.

(2) By an Order of the Chancery Division of the High Court of Justice made on the —— day of ——, In the matter of the —— Estates and other properties settled by the Settlement, and In the matter of the Settled Land Acts, 1882 to 1890 (19—, B. No. —), the Original Trustees were appointed to be trustees of the Settlement for the purposes of the said Acts (*g*) [and of section forty-two (*h*) of the Conveyancing Act, 1881].

(3) and (4) (*As in recitals* (2) *and* (3) *of Prec.* IA).

Desire to appoint new trustees.

(5) The Appointor is desirous of appointing the New Trustees to be trustees of the Settlement in the place of the said D. T. (deceased) for the general purposes thereof and also for the purposes of the Settled Land Act, 1925, and to act jointly with the Continuing Trustee:

Deed of declaration.

(6) (*As in recital* (5) *of Prec.* IA *down to* "declared that" *and continue*—"the Continuing Trustee and the New Trustees

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(*f*) See first note to Prec. No. IA, *supra*, also particularly T. Act, 1925, s. 64 (2), which now gives to a person nominated to appoint trustees generally a power to appoint S. L. Act trustees in place of those appointed by the court, thus reversing the old practice, under which the surviving trustees made the appointment.

(*g*) See S. L. Act, 1882, s. 38, now replaced by S. L. Act, 1925, s. 34.

Management during a minority, &c.

(*h*) Now replaced, with amendments, by S. L. Act, 1925, s. 102, under which the S. L. Act trustees, as such, will, in nearly all cases, have the special powers of management during a minority or pending a contingency.

were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 ") :

Endorsement of notice.

(7) (*As in recital* (6) *of Prec.* IA) :

Intention to transfer investments.

(8) It is intended that (after raising and paying thereout the costs of and incidental to this Appointment, the said Deed of Declaration and Memorandum) the money and investments mentioned in the Schedule hereto shall, so soon as practicable, be transferred into the joint names of the said C. T. and the New Trustees :

NOW, in exercise of the powers for this purpose conferred by the Settlement and by section sixty-four of the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees of the settlement and for S. L. Act purposes.

1. THE Appointor hereby appoints the New Trustees—

(i) To be trustees of the Settlement in the place of the said D. T. (deceased) and to act jointly with the said C. T. for all the purposes for which the Original Trustees were appointed trustees by the Settlement :

(ii) To be trustees of the Settlement in the place of the said D. T. (deceased) for all the purposes of the Settled Land Act, 1925 [including the powers of management given by section one hundred and two of that Act and the statutory powers of maintenance and accumulation applicable during a minority and for any other purposes mentioned in the recited Order (*i*)] and to act jointly with the Continuing Trustee for those purposes.

Implied vesting declaration.

2. (*As in clause* 2 *of Prec.* IA, *but saying* " which ought to be vested in the Continuing Trustee and the New Trustees.")

IN WITNESS, &c.(*j*) [*See over for Schedule and notes.*]

Maintenance and accumulations under realty settlements made before 1926.

(*i*) Conv. Act, 1881, ss. 42 and 43, were kept alive by L. P. Act, 1925, 7th Sch., so far as they related to instruments coming into operation before 1926. The T. Act, 1925, s. 31 (maintenance and accumulation), does not apply where the instrument came into operation before 1926 : *ib.*, sub-s. (5). But by s. 70 (repeal of enactments in 2nd Sch.), Conv. Act, 1881, s. 42 (4) and (5), were repealed ; nothing in the repeal affects an appointment made under s. 42, and a reference to s. 42, *semble*, will be construed as a reference to s. 31, which replaces it : *ib.*, s. 70. In any case, during a minority, the legal estate in the land will be vested in trustees so that Conv. Act, 1881, s. 43, will be applicable. Powers might be given by the court to the statutory owners under S. L. Act, 1925, s. 64. Under that Act, s. 119, 7th Sch., sub-ss. (1), (2), (3) and (7) of s. 42 of Conv. Act, 1881, are repealed, for s. 102 takes their place.

Registered land.

(*j*) If the settled land is registered under the L. R. Act, 1925, there should be an application by A. B. and C. T. to modify the restriction by substituting the names of N. T. and N. N. T. for C. T., see form at end of Prec. IA, *supra.*

THE SCHEDULE.

Particulars of investments and capital money.

No. IIB.

DEED *declaring the* NAMES *of the* PRESENT S. L. ACT TRUSTEES *of the* SETTLEMENT, *when* NEW TRUSTEES *are to act jointly with a* CONTINUING TRUSTEE. (*Legal Estate.*)

Parties.

THIS DEED made (*date*), BETWEEN (*parties as in last Precedent*): Supplemental to a Vesting Deed dated, &c., and made, &c. (*the last or only principal vesting instrument*), WITNESSETH, pursuant to section thirty-five of the Settled Land Act, 1925, and it is hereby declared that the said C. T., N. T., and N. N. T. are the trustees of the Settlement for the purposes of the Settled Land Act, 1925, the said D. T. having died on the —— day of ——, 19—.

Declaration.

IN WITNESS, &c.

No. IIIA.

APPOINTMENT *of* NEW TRUSTEES *of a* COMPOUND SETTLEMENT *by a* PERSON *having power to appoint* S. L. ACT TRUSTEES *of the* RE-SETTLEMENT (*k*) *in the place of a* PERSON *abroad or unfit to* ACT. (*Equitable Interests.*)

Parties.

THIS APPOINTMENT is made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (hereinafter called the Continuing Trustee), of the 2nd part, and N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New Trustees), of the 3rd part: WHEREAS:—

Compound Settlement.

(1) As appears from the documents and facts mentioned in the First Schedule hereto the Appointor is tenant for life in

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Endorsement on vesting deed.

The consequential endorsement on the principal vesting deed to be signed on behalf of the trustees will be as follows:—

(*Date.*) TAKE NOTICE that C. T., of, &c., N. T., of, &c., and N. N. T., of, &c., are the present trustees for the purposes of the Settled Land Act, 1925, of the Settlement referred to in the [within] [above] written Vesting Instrument.

Trustees under last instrument.

(*k*) This assumes that there were no S. L. Act trustees of any of the instruments prior to the re-settlement: L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, s. 31.

possession of the properties therein referred to under the Re-settlement mentioned in that Schedule (hereinafter called the Re-settlement), whereof the Continuing Trustee and X. Y. (hereinafter together called the Original Trustees) are the present trustees for the purposes of the Settled Land Act, 1925, and has power during his life to appoint new trustees of the Re-settlement :

No S. L. Act trustees of instruments prior to the re-settlement.

(2) As also appears from that Schedule, there are no trustees for the purposes of that Act of any of the instruments constituting the Compound Settlement referred to in that Schedule which are prior in date to the Re-settlement, and accordingly the Original Trustees are now the trustees of the said Compound Settlement :(*l*)

Heirlooms and capital money.

(3) Certain chattels directed to be held as heirlooms, along with the freehold properties comprised in the Settlement, are vested in the Original Trustees as trustees of the Re-settlement, and the investments and money mentioned in the Second Schedule hereto (representing capital money for the purposes of the said Act) are also standing in their names :

Disability of trustee.

(4) The said X. Y. has remained outside the United Kingdom for more than twelve months [*or otherwise state the disability :* S. L. Act, 1925, s. 35 (3)] :

Desire to appoint.

(5) The Appointor is desirous of appointing the New Trustees to be trustees of the Re-settlement in the place of the said X. Y. and to act jointly with the Continuing Trustee :

Deed of declaration.

(6) By a Deed of Declaration (*as in recital* (5) *of Prec.* IA) (supplemental to the Principal Vesting Deed mentioned in the First Schedule hereto) it was declared that the Continuing Trustee and the New Trustees were the trustees of the Compound Settlement for the purposes of the Settled Land Act, 1925 :

(7) (*As in recital* (6) *of Prec. I*A) :(*m*)

Construction of amendment of s. 31.

(*l*) It is conceived that if three instruments (A., B., & C.), constitute a settlement, and if there are no S. L. Act trustees of A., but there are S. L. Act trustees of B., then the latter, as being trustees of B. & C., by virtue of S. L. Act, 1925, s. 31, would also become trustees of the compound settlement consisting of A., B. and C. ; the persons having power to appoint trustees of B. would be the proper persons to appoint trustees, who would, till displaced, act as trustees of the compound settlement. The expression "the instrument" in the amendment of s. 31 can be properly construed as "the instruments," and the tenant for life becomes tenant for life thereunder, though for the purposes of working the Act (see s. 1), the trustees of A., B. and C. will be the persons to be named in the vesting instrument as the S. L. Act trustees.

Endorsement

(*m*) For form of endorsement see note to Prec. IIA.

Intended vesting order.

(8) It is intended that (unless other arrangements can be made) an application shall be made to the court under the Trustee Act, 1925, for a vesting order,(*n*) or an order appointing a person to transfer or join in transferring, in the name of the said X. Y., the investments and money mentioned in the Second Schedule hereto into the joint names of the Continuing Trustee and the New Trustees, and that the costs of and incidental to this Appointment, the said Deed of Declaration and Memorandum and of the said application, shall be discharged thereout :
NOW, in exercise of the power for this purpose conferred by the Re-settlement and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment in place of trustee unable to act.

1. THE Appointor hereby appoints the New Trustees to be trustees of the Re-settlement in the place of the said X. Y. and to act jointly with the Continuing Trustee for all the subsisting purposes of the Re-settlement and to the intent that (until trustees are appointed in their place) the Continuing Trustee and the New Trustees shall also act as trustees of the Compound Settlement mentioned in the First Schedule hereto for the purposes of the Settled Land Act, 1925.

Implied vesting declaration.

2. (*As in clause* 2 *of Prec.* IA, *supra.*)

IN WITNESS, &c. [*Add Schedules, the first to contain particulars and facts relating to the Compound Settlement, the second to contain particulars of the capital money and investments.*]

No. IIIB.

DEED *declaring the* NAMES *of the* PRESENT S. L. ACT TRUSTEES *of the* SETTLEMENT, *where* NEW TRUSTEES *have been appointed in place of a* TRUSTEE *who is out of the* UNITED KINGDOM *or otherwise unable to act.* (*Legal Estate.*)

THIS DEED, &c. (*as in Prec.* IIB ; *at the end, instead of referring to the death of a trustee, say* "the said N. T. and N. N. T., having been appointed in place of the said X. Y., who has remained out of the United Kingdom for more than twelve months," *or otherwise as the case requires*).(*o*)

IN WITNESS, &c.

Vesting order where appointment is made out of court.

(*n*) Though the appointment is made out of court a vesting order can be obtained: T. Act, 1925, ss. 51 (1) (i), (2), 58 to 60.

(*o*) See S. L. Act, 1925, s. 35 (3), as to the disabilities which can be mentioned.

No. IV.

APPOINTMENT *of a* NEW TRUSTEE *of an equitable* PORTIONS TERM (*p*) *created by a* SETTLEMENT *of* REAL ESTATE, *by Deed* ENDORSED *or* WRITTEN *at the* FOOT *of the* SETTLEMENT. (*Equitable Interest.*)

Parties.

THIS APPOINTMENT made, &c., BETWEEN the within- [*or* above-] named A. B. (hereinafter called the Appointor), of the 1st part, N. T., of, &c. (hereinafter called the New Trustee), of the 2nd part, and the within-named C. T. (*Continuing Trustee*) and the New Trustee of the third part, WITNESSETH that the Appointor, in exercise of the power for this purpose conferred on him by the within- [*or* above-] written Settlement and of all other powers, hereby appoints the New Trustee to be a trustee of the term of —— years created by the said Settlement in the place of the within- [*or* above-] named D. T. (who died on the —— day of ——), and to act jointly with the said C. T., and declares (*q*) that the implied vesting declaration shall extend to all the lands which by any means have become and are now in equity or otherwise comprised in the said term.

Appointment of new trustee of term, and declaration that term shall vest in surviving and new trustee.

IN WITNESS, &c.

No. V.

APPOINTMENT *of a* NEW TRUSTEE *of a* JOINTURE TERM. (*Equitable Interest.*)(*r*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN C. T., of, &c. (*Continuing Trustee of term*), of the one part, and N. T., of, &c.

Different trustees of portions term.

(*p*) It is supposed that by the settlement different trustees are appointed for the term of years to those appointed for general purposes. The modern practice is for portions terms, &c., to be limited to the general trustees, in which case see Prec. IA of this Group. The term would take effect in equity after the Vesting Deed was made: S. L. Act, 1925, 2nd Sch., para. 1 (6).

(*q*) This vesting declaration implied under T. Act, 1925, s. 40, can be negatived; this is not recommended.

Jointure terms not necessary since 1881.

(*r*) In settlements made after 1882 it is unusual to find limitations of terms for securing jointures. Under L. P. Act, 1925. s. 121 (replacing Conv. Act, 1881, s. 44, with amendments), the person entitled to an annual sum charged on land can limit a term to trustees on usual trusts for raising arrears. After 1925 a jointress, being entitled to an equitable rentcharge (only perpetual rentcharges or rents for terms of years absolute can take effect as legal estates), can only appoint an equitable term. She or her term trustees must enforce their remedies against the estate owner of the settled land under S. L. Act,

Modes of raising arrears after 1925.

(hereinafter called the New Trustee) of the other part: WHEREAS :—

Settlement creating rentcharge.

(1) Under a Deed (hereinafter called the Settlement) dated, &c., and made, &c., being a settlement of certain freehold properties in the County of ——, a yearly rentcharge of £—— was limited out of the said properties TO THE USE of the said Jane B. in the event (which happened) of her surviving her husband, the said A. B., during the residue of her life :

Rentcharge fell into arrear and term limited under statutory power.

(2) In the year —— the said rentcharge fell into arrear and accordingly by an Appointment (hereinafter called the Principal Deed) dated, &c., and made between the said Jane B. of the one part and D. T. (*a deceased Trustee*) and the said C. T. of the other part, the said Jane B., in exercise of the power for that purpose conferred on her by section forty-four (*rr*) of the Conveyancing Act, 1881, limited all the properties by the Settlement charged with the payment of the said rentcharge TO THE USE of the said D. T. and C. T. for the term of —— years without impeachment for waste upon the usual trusts for raising the arrears and securing payment of the said rentcharge :

Legal mortgage of jointure term by sub-demise.

(3) By a Mortgage dated, &c., and made between the said D. T. and C. T. of the one part, and X. (*Mortgagee*) of the other part, the said D. T. and C. T. demised the properties mentioned in the Schedule thereto (being part of the properties comprised in the said term of —— years) to the said X. for the residue of the said term, except the last day thereof, by way of mortgage for securing payment to the said X. of the principal sum of £—— and further advances, with interest thereon as therein mentioned :

Death of trustee.

(4) The said D. T. died on the —— day of —— :

Vesting Deed.

(5) By a Vesting Deed dated, &c., and made, &c., and by virtue of the Law of Property Act, 1925, the legal estate in fee simple in the said properties became vested in C. B. (a son of

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1925, s. 16, and require him to raise the money by a legal mortgage, either under that section or under s. 71, see Vol. II, pp. 152-155.

Conversion of terms for securing family charges into equitable terms.

Mortgage term remains a legal term.

(*rr*) Though S. L. Act, 1925, 2nd Sch., para. 1 (6), speaks of interests "thereby limited," *i.e.*, by "settlements" subsisting on 1st January, 1926, still, in view of the meaning given to settlements by s. 1, this must include an appointment creating a term in exercise of a power in a settlement, hence, when the vesting deed was made, this converted the legal jointure term into an equitable term. This does not apply to the sub-term created by the mortgage (see recital (3)), for this was disposed of for raising money and remains a legal term: L. P. (Amend.) Act, 1926, Sch., explaining para. 1 (6) of the 2nd Sch. to the S. L. Act, 1925.

the said A. B., deceased), on the trusts of the Settlement and the term created by the Principal Deed was, by virtue of the Second Schedule to the Settled Land Act, 1925, converted into an equitable term, but without prejudice to the legal sub-term vested in the said X. under the recited Mortgage:

Desire to appoint a new trustee.

(6) The said C. T., as such surviving trustee as aforesaid, is desirous of appointing the New Trustee to be a trustee of the Principal Deed in the place of the said D. T. (deceased): NOW, for effectuating the aforesaid desire and in exercise of the power for this purpose conferred on him by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

Appointment of new trustee.

1. THE said C. T. hereby appoints the New Trustee to be a trustee of the Principal Deed in the place of the said D. T. (deceased) and to act jointly with the said C. T. for all the purposes of that Deed.

Vesting declaration of term (subject to the Mortgage).

2. THE said C. T. hereby declares that the implied vesting declaration shall extend to all the properties which are now comprised in the said term limited by the Principal Deed, but subject to the recited Mortgage and to the legal sub-term thereby created so far as it affects the premises.(*s*)

IN WITNESS, &c.

NO. VI.

APPOINTMENT *of* NEW TRUSTEES *of a* REALTY SETTLEMENT *made after* 1925. (*Equitable Interest.*)

Parties.

THIS APPOINTMENT is made (*date*) BETWEEN A. B., of, &c. (hereinafter called the Appointor), of the 1st part, C. T., of, &c. (hereinafter called the Continuing Trustee), of the 2nd part, and N. T., of, &c., and N. N. T. (hereinafter called the New Trustees) of the 3rd part: WHEREAS:—

Vesting deed.

(1) By a Principal Vesting Deed dated, &c., and made between the Appointor of the 1st part, Jane W., of, &c., of the 2nd part, and D. T. and the Continuing Trustee (hereinafter together called the Original Trustees) of the 3rd part (in consideration of the marriage shortly afterwards solemnised between

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(*s*) A new trustee would not be required, unless further money is intended to be raised and the existing mortgagee refuses to advance it. As to raising the money, see last note.

the Appointor and the said Jane W.), the Appointor declared that the freehold and leasehold properties therein mentioned (including certain enfranchised lands affected by manorial incidents which have since been extinguished) were vested in him in fee simple or for the residue of the terms for which the same were held Upon the trusts declared concerning the same by the Trust Instrument next hereinafter mentioned :

Trust instrument.

Heirlooms.

Capital money.

S. L. Act Trustees.

New trustees.

(2) By a Trust Instrument (hereinafter called the Settlement) bearing even date with and executed concurrently with the said Vesting Deed and made between the same parties and in the same order, the Appointor declared that he would, after the said marriage, stand possessed of the said properties Upon the trusts therein mentioned : By the Settlement certain chattels were assigned to the Original Trustees, to be held as heirlooms, along with the freehold properties thereby settled : And the Original Trustees agreed to stand possessed of certain capital money and investments (which had been previously transferred to them) Upon the like trusts as if the same had been capital money arising under the Settled Land Act, 1925, from the freehold properties thereby settled : And by the Settlement the Original Trustees were appointed to be the trustees thereof for the purposes of the Settled Land Act, 1925, and power was thereby given to the Appointor during his life to appoint new trustees thereof :

Subsidiary vesting deeds

(3) Parts of the properties comprised in the recited Vesting Deed have been sold or exchanged and out of the capital money thereby arising and out of other capital money subject to the trusts of the Settlement, the compensation for the extinguishment of the said manorial incidents has been discharged, certain authorised improvements have been effected and the properties comprised in the Subsidiary Vesting Deeds mentioned in the First Schedule hereto have been acquired :

Capital money in Second Schedule.

(4) The Second Schedule hereto contains particulars of the capital money and investments now remaining subject to the trusts of the Settlement :

Death of trustee.

(5) The said D. T. died on —— (*date*) :

Desire to appoint.

(6) The Appointor is desirous of appointing the New Trustees to be trustees of the Settlement in the place of the said D. T. :

Deed of declaration.

(7) By a Deed of Declaration (supplemental to the recited Vesting Deed) of even date with and made between the same persons as are parties hereto, it was, pursuant to section thirty-five

of the Settled Land Act, 1925, declared that the Continuing Trustee and the New Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :(*t*)

Endorsement on vesting deed.

(8) It is intended that a memorandum shall be endorsed on the recited Vesting Deed pursuant to sub-section (2) of section thirty-five of the Trustee Act, 1925 :(*u*)

Intention to transfer investments.

(9) It is intended that (after raising and paying thereout the costs of and incidental to this Appointment, the said Deed of Declaration and Memorandum) the money and investments mentioned in the Second Schedule hereto shall be transferred into the joint names of the Continuing Trustee and the New Trustees. NOW, in exercise of the power for this purpose conferred by the Settlement and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees.

1. THE Appointor hereby appoints the New Trustees to be trustees of the Settlement in the place of the said D. T., deceased, and to act jointly with the Continuing Trustee for all the subsisting purposes of the Settlement.

Vesting declaration applicable to heirlooms, things in action and equitable terms.

2. THE requisite vesting declaration shall be implied pursuant to section forty of the Trustee Act, 1925.

IN WITNESS, &c.(*v*)

THE FIRST SCHEDULE.

Particulars of Subsidiary Vesting Deeds.

Date.	Parties.	Property acquired.	Amount of consideration paid out of capital money.

THE SECOND SCHEDULE.

Particulars of Capital Money and Investments.

Deeds of declaration where S. L. Act trustees are appointed by the court.

(*t*) For the form of this Deed, see Prec. IIB, *supra*.

(*u*) For the form of this endorsement see notes to Prec. IIA, *supra*.

(*v*) A precedent is not given of a Deed of Declaration where S. L. Act trustees are appointed by the court, first because, having regard to S. L. Act, 1925, ss. 30, 31 (as amended by L. P. (Amend.) Act, 1926), 32 and 33, such appointments will seldom be required, and secondly because the form will,

No. VII.

APPOINTMENT *of a* TRUST CORPORATION *to be a* NEW TRUSTEE *of a* SPECIAL SETTLEMENT *created under* S. L. Act, 1925, s. 21, *for* OVERREACHING LIFE ANNUITIES *granted to an* INSURANCE SOCIETY *by a person when his estate was in remainder.*(*w*) (*Equitable Interest.*)

Parties.

THIS APPOINTMENT is made (*date*) BETWEEN The X Bank Limited, whose registered office is at —— (hereinafter called the Old Bank) of the 1st part, C. B., of &c. (hereinafter called the Estate Owner), of the 2nd part and The Y Bank Limited, whose registered office is at —— (hereinafter called the New Bank), of the 3rd part: WHEREAS:—

Seisin subject to life annuities, created for money's worth.

(1) Under a Deed (hereinafter called the Settlement) dated, &c., and made, &c., and by reason of the death of the said A. B. (the father of the Estate Owner) on the —— and by virtue of a Disentailing Assurance dated, &c., and made, &c., the Estate Owner was, at the date of the Vesting Deed hereinafter mentioned, seised of the freehold properties described in that Vesting Deed for an estate in fee simple in possession subject to the annuities (payable during the residue of his life) mentioned in the First Schedule hereto, which were created by the Estate Owner for money's worth in favour of the —— Insurance Society, but otherwise free from incumbrances:

Vesting deed creating a special settlement.

(2) By a Vesting Deed dated, &c., and made between the Estate Owner of the one part and the Old Bank of the other part, the Estate Owner, pursuant to section twenty-one of the Settled Land Act, 1925, declared that the fee simple in possession of the said properties was vested in him UPON TRUST to give effect to all the equitable interests and powers affecting the said estate in fee simple; And it was thereby declared that the Old Bank was the trustee (*x*) of the settlement for the purposes of the Settled Land Act, 1925:

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under *ib.*, s. 35, depend on the form of the order, the deed will be executed by such person as the court may direct.

(*w*) The instrument under which the estate is acquired becomes the "trust instrument"; only where there is no such instrument (*e.g.*, where the settlor took as heir-at-law before 1898), has a trust instrument to be executed under S. L. Act, 1925, s. 21.

(*x*) This declaration *ipso facto* constitutes the bank to be trustees of the settlement: S. L. Act, 1925, s. 21 (1) (c); the bank must execute.

(3) Since the date of the said Vesting Deed the greater part of the said properties have been sold and the net proceeds are now represented by the investments and money mentioned in the Second Schedule hereto standing in the name of the Old Bank:

Sales.

(4) It is intended that proceedings shall be taken for winding up the Old Bank for purposes of sale and amalgamation and accordingly the Old Bank is desirous of retiring from the trust and (with the consent of the Estate Owner testified by his execution hereof) of appointing the New Bank to be a trustee of the settlement in the place (*y*) of the Old Bank:

Intention to wind up and desire to retire.

(5) By a Deed of Declaration (supplemental to the said Vesting Deed) of even date with and made between the same parties as are parties hereto, it was, pursuant to section thirty-five of the Settled Land Act, 1925, declared that the New Bank was the trustee of the settlement for the purposes of that Act:

Deed of declaration.

(6) It is intended that, pursuant to the Trustee Act, 1925, a Memorandum shall be endorsed on the said Vesting Deed stating that the New Bank is the trustee of the settlement for the purposes of the Settled Land Act, 1925:

Endorsement.

(7) It is intended that (after discharging thereout the costs of and incidental to this appointment the said Deed of Declaration and Memorandum) the money and investments mentioned in the Second Schedule hereto shall be transferred into the name of the New Bank:

Intention to transfer investments.

NOW, in exercise of the power for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows:—

1. THE Old Bank hereby appoint the New Bank to be a trustee of the Settlement in the place of the Old Bank (which retires from the trust) and for all the subsisting purposes thereof.

2. No vesting declaration shall be implied herein.

Negation of vesting declaration.

IN WITNESS, &c. [*See over for Schedules.*]

A special settlement is available for the purpose of overreaching an equitable mortgage (not by deposit) or other general equitable charge: *ib.*, s. 21 (1) (d), (2). It is not available where the land becomes subject to a trust for sale.

Equitable mortgage.

(*y*) Dissolution of a company renders it incapable of acting, and a new trustee can be appointed in its place: T. Act, 1925, s. 36 (3). As to vesting orders on dissolution: *ib.*, ss. 44 (ii) (c), 55 (1) (ii) (c); L. P. Act, 1925, s. 181, enabling the court to re-create a trust estate which has determined.

Dissolution of a company.

THE FIRST SCHEDULE.(z)

Particulars of annuities payable during the residue of the lifetime of the Estate Owner and granted to the —— Insurance Society for money's worth.

Date of Grant.	Parties to Grant.	Property charged.	Amount of Annuity.

THE SECOND SCHEDULE.

Particulars of capital money and investments.

GROUP E.—APPOINTMENTS OF NEW TRUSTEES OF WILLS (REAL), DEEDS OF DECLARATION, &C.

NO. IA.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL *settling* LAND, CAPITAL MONEY *and* HEIRLOOMS. (*Equitable Interest.*)

Parties.

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c., (hereinafter called the Appointor) of the 1st part, C. T., of, &c. (hereinafter called the Continuing Trustee) of the 2nd part, N. T., of, &c., and N. N. T., of, &c. (hereinafter called the New

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Family charges. Optional methods of making title.

(z) Family charges within S. L. Act, 1925, s. 1 (1) (v), are not within s. 21; the existence of such charges creates a settlement, and see *ib.*, s. 20 (1) (ix), also L. P. (Amend.) Act, 1926, s. 1, giving an absolute owner, entitled subject to a charge, an option to make title either in right of his estate subject to the charge, which would be done if he were raising money for his own purposes, unless the transaction could be brought within S. L. Act, 1925, s. 16 (2), see also *ib.*, s. 95; or he can make title under his statutory powers, and override the charge. This amendment is not intended to encourage the making of second class titles, whenever practicable the statutory powers should be exercised.

The option extends to an owner who has made a special settlement under s. 21, for the land is thereby made "settled land," and in effect the charge operates as if created by the settlement.

Special trust for sale.

For the alternative method of a special trust for sale, see L. P. Act, 1925, s. 2 (2), as amended by L. P. (Amend.) Act, 1926, Sch.; any trust for sale can be converted into an overriding trust for sale by obtaining the approval of the trustees or by the appointment of a trust corporation.

Trustees), of the 3rd part, and the Continuing Trustee and the New Trustees of the 4th part: WHEREAS:—

Will.

(1) X. Y. (hereinafter called the Testator) duly made his Will dated, &c., and thereby, after appointing D. T. (deceased) and the Continuing Trustee (hereinafter together called the Original Trustees) to be his executors and trustees, and also the trustees of his Will for all the purposes of the Settled Land Acts, 1882 to 1890, and of section forty-two (*a*) of the Conveyancing Act, 1881, and after bequeathing certain legacies (which have all been satisfied), devised all his freehold properties to certain uses under which the Appointor became tenant for life in possession, and also devised and bequeathed to the Original Trustees his copyhold and leasehold properties and certain chattels directed to be held as heirlooms UPON TRUSTS corresponding as nearly as might be with the limitations of his freehold properties, And (subject to the payment of his funeral and testamentary expenses and debts and the legacies bequeathed by his Will) the Testator bequeathed all his residuary personal estate to the Original Trustees UPON TRUSTS for sale and investment, and to be held by them (after discharging funeral and testamentary expenses, debts and legacies) as capital money arising from sales of the freehold properties thereby settled, and so as to be primarily liable to be laid out in the purchase of freehold land to be conveyed to the uses of the said Will, And the said Will contained a power for the Appointor during his life to appoint a new trustee or new trustees thereof:

Death and probate.

(2) The Testator died on, &c. (*before* 1926), and his said Will was on the (*date*) duly proved at the —— Probate Registry by the Original Trustees:

Realisation of residuary personal estate.

(3) The Original Trustees converted so much of the Testator's residuary personal estate as did not consist of money or authorised investments and paid his funeral and testamentary expenses, debts and legacies and the duties payable out of capital on his death, and invested the residue of the net proceeds and of his ready money in manner directed by his said Will:

Vesting deed.

(4) By a Vesting Deed dated, &c., and made between the Original Trustees of the one part and the Appointor of the other part, it was declared that the said freehold and leasehold properties and enfranchised lands (formerly copyhold of the Manor of ——) were vested in the Appointor in fee simple or

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(*a*) As to maintenance, accumulation and powers of management during a minority, see notes to Prec. IIA of last Group, pp. 502, 503.

for the residue of the terms for which the same were held (but as to the enfranchised lands subject to the manorial incidents affecting the same) Upon the trusts of the said Will :

Death of a trustee.

(5) The said D. T. died on the —— day of —— :

Desire to appoint new trustees.

(6) The Appointor is desirous of appointing the New Trustees to be trustees of the recited Will in the place of the said D. T., deceased.

Deed of Declaration.

(7) By a Deed of Declaration (supplemental to the recited Vesting Deed), bearing even date with and made between the same parties as are parties hereto, it was, pursuant to section thirty-five of the Settled Land Act, 1925, declared that the Continuing Trustee and the New Trustees were the trustees of the Settlement (created by the Will referred to in the said Vesting Deed) for the purposes of the Settled Land Act, 1925 :

Endorsement.

(8) It is intended that, pursuant to the Trustee Act, 1925, a memorandum shall be endorsed on the recited Vesting Deed, stating that the Continuing Trustee and the New Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Present state of investments and intention to transfer.

(9) The residuary personal estate of the Testator and capital money arising under the said Will are now represented by the investments mentioned in the Schedule hereto, standing in the name of the Continuing Trustee, and it is intended that the same shall (after raising and paying thereout the costs of and incidental to this Appointment, the said Deed of Declaration and Memorandum) so soon as practicable, be transferred into the joint names of the Continuing Trustee and the New Trustees : NOW, in exercise of the powers conferred for this purpose by the said Will and of all other powers, THIS DEED WITNESSETH as follows :—

Appointment of new trustees of realty Will.

1. THE Appointor hereby appoints the New Trustees to be trustees of the recited Will in the place of the said D. T., deceased, and to act with the Continuing Trustee for all the subsisting purposes of the said Will.

Vesting declaration applicable to heirlooms, &c.

2. THE requisite Vesting Declaration shall be implied herein pursuant to section forty of the Trustee Act, 1925.

IN WITNESS, &c.(b)

THE SCHEDULE.

Particulars of investments and capital money.

Precedents relating to

(b) The precedents in the last Group, relating to appointments of new trustees of Realty Settlements, will apply to Realty Wills, save that, as in

No. IB.

DEED *declaring the names of the* PRESENT S. L. ACT TRUSTEES *of a* REALTY WILL, *where, a trustee having died, new trustees have been appointed in his place.* (*Legal Estate.*)

Parties.

THIS DEED made (*date*), BETWEEN (*parties as in last Precedent*); Supplemental to a Vesting Deed dated, &c., and made, &c. (*the last or only principal instrument*) WITNESSETH, pursuant to section thirty-five of the Settled Land Act, 1925, and it is hereby declared that the said C. T., N. T. and N. N. T. are the trustees of the settlement created by the Will mentioned in the said Vesting Deed for the purposes of the Settled Land Act, 1925, the said D. T. having died on the —— day of ——:

Declaration.

IN WITNESS, &c.(c)

No. II.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL *under which a* MARRIED WOMAN *is absolutely and beneficially entitled to a* LEGAL ESTATE, *subject to a* RESTRAINT *on* ANTICIPATION *during coverture.*(d) (*Equitable Interest.*)

Parties.

THIS APPOINTMENT is made (*date*), BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Appointors), of the

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Realty settlements applicable.

the above precedent, references will, where necessary, be made to the Will in place of a settlement or trust instrument by deed.

Stamp.

The stamp will be 10*s*.

Endorsement.

(c) The endorsement to be made on the principal vesting deed and signed by or on behalf of the trustees will run as follows:—

(*Date*) TAKE NOTICE that C. T., of, &c., N. T., of, &c., and N. N. T., of, &c., are the present trustees of the Settlement created by the Will within referred to for the purposes of the Settled Land Act, 1925.

Restraint on anticipation.

(d) See S. L. Act, 1925, ss. 1 (1) (iv), 20 (1), (x), which remove the difficulties disclosed in *Bates* v. *Kesterton* [1896], 1 Ch. 159; 65 L. J. Ch. 108; whether the settlement is made before or after 1st January, 1926; see also *Re Pocock and Prankerd* [1896], 1 Ch. 302.

Vesting assent takes the place of vesting deed, when.

Where the settlement is made by a testator who dies after 1925, a vesting assent by the executors takes the place of a vesting deed: S. L. Act, 1925, s. 6; 2nd Sch., para. 1. The executors, in default of other S. L. Act trustees, become the trustees of the settlement: *ib.*, s. 30 (3).

When S. L. Act, 2nd Sch., para. 1, does not apply.

Vesting deed before representation.

A vesting deed could not be made under 2nd Sch., para. 1, if, before it is executed, the land becomes vested in the personal representatives of a deceased tenant for life: *ib.*, para. 1 (7); *semble*, such a deed could be executed (if the tenant for life died intestate) before letters of administration were granted, to vest the legal estate in the next tenant for life; *secus*, if he made a Will, for executors take from the death and not from the grant of probate.

1st part, Jane M. (hereinafter called the Estate Owner), the wife of James M., of, &c., of the 2nd part, and N. T., of, &c., and N. T. T., of, &c. (hereinafter called the New Trustees), of the 3rd part: WHEREAS:—

Devise to married woman absolutely with a restraint.

(1) X. Y. (hereinafter called the Testator), being at his death entitled to the real estate and chattels real described in the Vesting Assent hereinafter recited, duly made his Will dated, &c., and thereby, after appointing the Appointors to be his executors (but without expressly appointing any Settled Land Act trustees), devised all his real estate and chattels real to his niece, the Estate Owner, absolutely, but without power of anticipation during any coverture:

Death and probate.

(2) The testator died, &c. (*after* 1925) and on the —— (*date*) the said Will was duly proved by the Appointors at the —— Probate Registry:

Vesting assent.

(3) By a Vesting Assent dated, &c., and made between the Appointors of the one part and the Estate Owner of the other part the Appointors assented to the vesting of the said real estate and chattels real in the Estate Owner upon the trusts of the said Will and declared that the Appointors were the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

(4) (*Recite Deed of Declaration of even date herewith between same parties; see former Precedents*):

(5) (*Recite intended endorsement on Vesting Assent; see former Precedents*):

Desire to retire.

(6) The Appointors are desirous of retiring from the trusts of the Settlement created by the said Will and, with the consent of the Estate Owner, of appointing the New Trustees to be trustees thereof in their place:

Appointment of new trustees.

NOW, in exercise of the power for this purpose conferred by the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH that the Appointors hereby appoint the New Trustees to be trustees of the said Will in the place of the Appointors and for the purposes of the Settled Land Act, 1925.

[*No vesting declaration is required, the legal estate is in the Estate Owner. The stamp is* 10*s. If there were any investments representing capital money these would have to be separately transferred; see former Precedents.*]

IN WITNESS, &c.

SECTION II.

DISCLAIMERS BY EXECUTORS AND TRUSTEES AND DISCHARGES OF TRUSTEES (WHERE NEW TRUSTEES ARE NOT APPOINTED).

GROUP A.—DISCLAIMERS BY EXECUTORS AND TRUSTEES.

No. I.

DISCLAIMER *of the Trusteeship of a* WILL *by* ONE *of two or more* TRUSTEES.(*e*) (*Equitable Interest.*)

THIS DEED OF DISCLAIMER is made this (*date*), BY A. B., of, &c. (*disclaiming party*): WHEREAS :—

Will and appointment of executors.

(1) G. H. (hereinafter called the Testator), by his Will dated, &c., after appointing the said A. B. and C. D. to be his executors and trustees, devised and bequeathed all his real and personal estate to his trustees upon the trusts therein mentioned:

Death and probate.

(2) The Testator died on, &c., without having revoked or altered his said Will, which was duly proved in the —— Probate Registry on the (*date*) by the said C. D. alone, the said A. B. having renounced probate:

Desire to disclaim.

(3) The said A. B. has never acted in the trusts of the said Will and is desirous of executing such disclaimer as is hereinafter contained:

Disclaimer by trustee.

NOW THIS DEED WITNESSETH that the said A. B. hereby disclaims the office of trustee under the said Will, and all real and personal estate and things in action whatsoever and wheresoever devised or bequeathed to him by the said Will (*f*) as one of the persons named as a trustee thereof, or as devolving on him as one of the persons therein named as one of the trustees and executors (*g*) thereof, and also all estates and powers thereby expressed to be given to him as such trustee or executor.

IN WITNESS, &c.

Stamp.

(*e*) Under the Stamp Act, 1891, a disclaimer deed, not being expressly mentioned in the schedule thereto, is liable to a 10*s.* stamp duty. So far as the deed relates to the trusteeship, it affects an equitable interest; so far as it operates as a renunciation of probate, it affects a legal estate if the testator had a legal estate in land.

(*f*) The trustee should simply disclaim and not profess to convey the property limited to him in trust: *Nicloson* v. *Wordsworth* (1818), 2 Swanst. 365. General words are implied under L. P. Act, 1925, s. 62, in the case of deeds of disclaimer: Theobald, 7th ed., 436; *Re Fisher and Haslett* (1884), 13 L. R. Ir. 546.

Vesting in executors.

(*g*) Under Part I of the Ad. of E. Act, 1925, real estate and chattels real vest in the executors who derive their title under the Will. Before 1912, if

No. II.

DISCLAIMER *by* TRUSTEE *of* WILL (*without recitals*).

BY THIS DEED OF DISCLAIMER made this (*date*), I, A. B., of, &c. (*disclaiming party*), hereby disclaim the office of trustee under the Will dated the —— day of —— of G. H. (who died on the —— day of ——, 19—), and all estates and powers thereby given to or vested in me as a trustee, or devolving on me as one of the persons named as executors of the said Will.(*h*)

IN WITNESS whereof I have hereunto set my hand and seal the day and year first above written.

No. III.

DISCLAIMER *by a* TRUSTEE *of a* PERSONALTY SETTLEMENT.(*i*)

THIS DEED OF DISCLAIMER is made this (*date*), BY A. B., of, &c. (*the disclaiming party*): WHEREAS :—

Settlement appointing disclaiming trustee one of the trustees.

(1) By a Deed (hereinafter called the Settlement) (*date and parties*), certain reversionary interests were expressed to be assigned to the said A. B. and G. H. upon the trusts therein mentioned [and they were directed to stand possessed of certain

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Power for proving executors alone to convey.

Distinction between disclaimer and renunciation.

they sold, all who had not renounced or disclaimed had to convey: *Re Pawley* [1900], 1 Ch. 58; 69 L. J. Ch. 6. This was first rectified by Conv. Act, 1911, s. 12, now re-enacted and amplified by Ad. of E. Act, 1925, ss. 2 (2), 8 and 24. It was never necessary for special executors of property in a foreign country to concur: *Re Cohen & L. C. C.* [1902], 1 Ch. 187; 71 L. J. Ch. 164. Disclaimer is more efficient than renunciation of probate, as the executor renouncing may subsequently be allowed to prove: *In b., Stiles* [1898], P. 12; 67 L. J. P. 23; Ad. of E. Act, 1925, s. 6; but the subsequent probate takes effect without prejudice to the previous acts and dealings of and notices to the representatives who had previously proved or obtained administration: *ib.*

Renunciation by S. L. Act trustees, when land ceases to be settled.

The former S. L. Act trustees have the first right as respects land formerly settled to the grant of probate or letters of administration specially limited to that land: *ib.*, s. 22; Jud. Act, 1925, ss. 155 and 162, then if by reason of the death the land ceases to be settled land, it may be expedient that the S. L. Act trustees should renounce their rights. If they have capital money and investments in their hands available for payment of duty, it may, in some cases, be desirable that they should take the grant.

(*h*) See notes to last Precedent.

Effect of disclaimer on beneficial interests.

(*i*) See note to Prec. I of this Group. A disclaimer will not (except in the case of a disentailing assurance) affect the interests of the beneficiaries; hence a voluntary settlement is not rendered inoperative by the disclaimer of the sole trustee: *Mallott* v. *Wilson* [1903], 2 Ch. 494; 72 L. J. Ch. 664.

Disclaimer of trusteeship under a conveyance on trust for sale.

It is more correct, where land has been expressed to be conveyed on trust for sale, that there should be a separate disclaimer of that trust, for in that case the deed relates to a legal estate, see next Precedent.

proceeds of sale of land expressed to be conveyed to them by a deed of even date therewith (hereinafter called the Conveyance) upon certain trusts] and divers powers and trusts were expressed to be conferred on them as such trustees :

(2) The said A. B. has not executed the Settlement [or the Conveyance] nor in any manner acted in the trusts thereof :

NOW THIS DEED WITNESSETH that the said A. B. hereby disclaims and renounces the office of trustee of the Settlement [and of the Conveyance] and all estate and interest in the property thereby [assigned *or*] conveyed [*or* settled], and all powers and trusts created by the Settlement [and the Conveyance] and thereby expressed to be made exercisable by the said A. B. and G. H. as the trustees thereof. **Disclaimer by trustee.**

IN WITNESS, &c.

No. IV.

DISCLAIMER *of the Trusts of a* DEED (*to be written at the foot of the Deed*).

BY THIS DEED OF DISCLAIMER made this (*date*), I, A. B., of, &c. (who am named as a party to and trustee of the above-written Deed), hereby declare that I have not accepted the trusteeship nor acted in any manner in the trusts thereof : And I disclaim the said trusteeship and all estates, interests and powers by the said Deed expressed to be vested in me [either solely or jointly with any other person]. **Disclaimer by trustee.**

IN WITNESS, &c.(*j*)

GROUP B.—DISCHARGES OF TRUSTEES.

No. I.

DISCHARGE *of a* TRUSTEE *of a* PERSONALTY SETTLEMENT *where the* TRUST PROPERTY *is vested in the* REMAINING TRUSTEES (*k*) *and no New Trustee is appointed.* (*Equitable Interests.*)

THIS DEED OF DISCHARGE is made, &c., BETWEEN A. B., of, &c., and F. B., his wife (*donees of the power of appointing new trustees*), of the 1st part, R. T., of, &c. (*retiring Trustee*), of the **Parties.**

(*j*) This Precedent can be used for the purposes of a Conveyance on trust for sale, or a Vesting Deed; in such cases it will relate to legal estates. When used in connexion with a Trust Instrument it would only relate to equitable interests.

(*k*) See T. Act, 1925, ss. 39, 40 (2). There must be either a trust corporation or at least two individuals left to perform the trust after the discharge : *ib.*, 2nd part, and C. T., of, &c., and C. C. T., of, &c. (*continuing Trustees*), of the 3rd part: WHEREAS:—

Settlement.

(1) This Deed is supplemental to a Deed (hereinafter called the Settlement) dated, &c., of ——, and made between the said A. B. of the 1st part, the said F. B. (then F. H., spinster), of the 2nd part, and D. T., D. D. T. (both deceased), and the said R. T., of the 3rd part (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the said A. B. and F. B.), whereof the said D. T., D. D. T., and R. T. were appointed to be trustees, and whereby the said A. B. and F. B. were empowered during their joint lives to appoint new trustees thereof:

Death of two trustees.

(2) The said D. T. died on the —— day of ——, and the said D. D. T. died on the —— day of ——:

Appointment of new trustees.

(3) By a Deed (hereinafter called the Appointment) dated, &c., and made, &c., the said C. T. and C. C. T. were appointed to be trustees of the Settlement in the place of the said D. T. and D. D. T. (both deceased) and to act jointly with the said R. T.:

State of settled property.

(4) The Husband's Trust Fund (other than the messuage and lands purchased as mentioned in the Appointment, and except the sum of cash hereinafter mentioned) now consists of the investments mentioned in the first part of the Schedule hereto, standing in the joint names of the said R. T., C. T. and C. C. T., and the second part of the same Schedule contains a debtor and creditor account showing the sales and investments made and the receipts and payments of the trustees in respect of the capital of that Trust Fund, And by such account it appears that there is now a balance of £—— cash in the hands of the said R. T., C. T. and C. C. T. standing to their credit at the —— bank:

Wife's Trust Fund not in possession.

(5) The Wife's Trust Fund has not yet fallen into possession:

Desire of trustee to be discharged.

(6) The said R. T. is desirous of being discharged from the trusts of the Settlement:

Intention to transfer investments and cash, and to vest the residue.

(7) It is intended that immediately after the execution hereof the investments mentioned in the first part of the Schedule hereto, and the residue of the said cash balance, after deducting the costs relating to the preparation and execution of this Deed

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s. 39, see also Public Trustee Act, 1906, s. 5. In *Re Leslie* [1911], 1 Ch. 611; 80 L. J. Ch. 486, the Public Trustee was appointed sole trustee by the court of a settlement which provided that the number of trustees should not be reduced below three. It is expedient to endorse notice of the discharge on the settlement.

and the Deed of even date hereinafter mentioned or otherwise incurred in the execution of the trusts of the Settlement, shall be transferred into the joint names of the said C. T. and C. C. T. alone.

Separate deed of discharge in regard to the trusts of a Conveyance on trust for sale.(*l*)

(8) It is also intended that by a Deed (*l*) bearing even date herewith, and made between the same parties and in the same order, and supplemental to the Conveyance (mentioned in the Appointment) of the aforesaid messuage and lands, the said R. T. shall be also discharged from being a trustee of the said messuage and lands and that the same shall be vested in the said C. T. and C. C. T. alone as joint tenants and as trustees of the said Conveyance;

NOW, in exercise of the powers conferred by sections thirty-nine and forty of the Trustee Act, 1925, THIS DEED WITNESSETH as follows:—

Desire to be discharged.

1. THE said R. T. hereby declares that he is desirous of being discharged from the trusts of the Settlement.

Consent to the discharge.

2. THE said A. B., F. B., C. T. and C. C. T. hereby consent to the discharge of the said R. T. from the trusts aforesaid, And to the vesting in the said C. T. and C. C. T. alone of the trust property.

Vesting declaration by all parties (express).

3. THE requisite vesting declaration shall be implied herein in relation to chattels and things in action (except mortgage debts intended to be separately transferred).

[*or* 3. ALL the parties hereto do, and each of them doth, hereby declare that all chattels and also the right to recover and receive all debts and other things in action (except mortgage debts intended to be separately transferred) subject to the trusts of the Settlement, shall forthwith vest in the said C. T. and C. C. T. alone as trustees of the Settlement for the purposes and upon the trusts thereof.]

IN WITNESS, &c.

THE SCHEDULE.

First Part.

Particulars of investments held on the trusts of the Husband's Trust Fund.

Second Part.

Particulars of dealings with the Husband's Trust Fund (*Debtor and Creditor Account*).

(*l*) See next Precedent. This must be done by a separate deed as it relates to a legal estate.

No. II.

DISCHARGE *of a* TRUSTEE *of* LAND *held on* TRUST *for* SALE *and purchased under a* POWER *in a* PERSONALTY SETTLEMENT,(m) *or otherwise, no New Trustee being appointed.* (*Legal Estate.*)

Parties.

THIS DEED OF DISCHARGE is, &c. (*parties as in last Precedent*) : WHEREAS :—

Conveyance on trust for sale.

(1) This deed is supplemental to a Conveyance (hereinafter called the Principal Deed) dated, &c., and made between X. of the 1st part, the said A. B. and F. B. of the 2nd part, and the said D. T., D. D. T. and R. T. of the 3rd part, whereby a messuage and lands situated at —— were conveyed to the said D. T., D. D. T., and R. T., in fee simple, UPON TRUST for sale as therein mentioned, and whereby the said A. B. and F. B. were given power to appoint new trustees :

Appointment of new trustees.

(2) and (3) (*Recite deaths of D. T. and D. D. T. and appointment of new trustees of the conveyance referring to it as* " The Principal Deed " *as in last Precedent*) :

Desire to be discharged.

(4) The said R. T. is desirous of being discharged from the trusts of the Principal Deed :

NOW, in exercise of the powers for this purpose conferred by sections thirty-nine and forty of the Trustee Act, 1925, THIS DEED WITNESSETH as follows :—

1. and 2. (*As in clauses* 1 *and* 2 *of last Precedent, but referring to* " the Principal Deed " *instead of* " the Settlement.")

Vesting declaration of land held on trust for sale (express).

3. THE requisite vesting declaration relating to the said messuage and lands shall be implied herein.

[*or* 3. ALL the parties hereto do, and each of them doth hereby declare, that the messuage and lands now subject to the trusts of the Principal Deed shall forthwith vest in the said C. T. and C. C. T. alone in fee simple or for other the estate and interest which ought to be vested in them as trustees of the Principal Deed and as joint tenants for the purposes and upon the trusts thereof.]

IN WITNESS, &c.

Notice.

Other conveyances on trust for sale.

(m) See T. Act, 1925, ss. 39 and 40, and notes to last Precedent. It is expedient to endorse notice of the deed of discharge on the conveyance on trust for sale. This Precedent can be adapted to the cases where land is by a deed of even date with the personalty settlement conveyed on trust for sale, or where land is purchased under L. P. Act, 1925, s. 28, and conveyed on trust for sale.

No. III.

DISCHARGE *of a* TRUSTEE *from a* MORTGAGE DEBT *assigned by a* DEED *of* EVEN DATE *with a* PERSONALTY SETTLEMENT *and* TRANSFER *of the* DEBT *and* SECURITIES (*n*) *where no New Trustee is appointed.* (*Legal Estate.*)

THIS DEED OF DISCHARGE, &c. (*parties as in Prec.* I, *p.* 521): WHEREAS:— Parties.

(1) This deed is supplemental to a Transfer (hereinafter called the Principal Deed) dated, &c., and made between the said A. B. of the 1st part, the said F. B. (then F. H., Spinster) of the 2nd part, and the said R. T., C. T. and C. C. T. of the 3rd part (endorsed on a Mortgage dated, &c., and made, &c.), by which Principal Deed, in consideration of the marriage shortly afterwards solemnised between the said A. B. and F. B., the principal sum of £—— and the interest thereon secured by the said Mortgage were transferred unto the said R. T., C. T. and C. C. T. upon the trusts thereby declared or referred to, and whereby the lands comprised in the said Mortgage were conveyed to the said R. T., C. T. and C. C. T. in fee simple, subject to the right of redemption subsisting under the said Mortgage; And the Principal Deed contained a power for the said A. B. and F. B. during their joint lives to appoint new trustees thereof: Settlement of mortgage debt.

[*If new trustees have been appointed the transfer of the mortgage consequential thereon must be recited. The transfer would contain the appointment.*]

(2) The said mortgage debt of £——, with the current interest thereon, is still owing to the said R. T., C. T. and C. C. T. upon the security of the said Mortgage which by virtue of the Law of Property Act, 1925, now takes effect as a mortgage for a term of 3,000 years: State of mortgage debt.

(3) The said R. T. is desirous of being discharged from the trusts of the Principal Deed: Desire to be discharged.

NOW, in exercise of the powers conferred by section thirty-nine of the Trustee Act, 1925, THIS DEED WITNESSETH as follows:—

(*n*) See T. Act, 1925, ss. 39 and 40, and note to Prec. I, pp. 521 *et seq.*

This discharge must be effected by a separate instrument from the deed of discharge relating to the personalty settlement, for this deed relates to a legal estate. The mortgaged property cannot be transferred by a vesting declaration. Separate deed of discharge.

1 and 2. (*As in clauses* 1 *and* 2 *of Prec.* I *of this Group, referring to* "the Principal Deed" *instead of* "the Settlement.")

Transfer of mortgage.

3. IN consideration of the premises the said R. T., C. T. and C. C. T., As Mortgagees, hereby convey and transfer to the said C. T. and C. C. T. the benefit of the said Mortgage.(*o*)

Trusts of mortgage debt.

4. THE said C. T., and C. C. T. shall stand possessed of the said mortgage debt and the interest thereon, Upon the trusts by the Principal Deed declared (by reference) concerning the same.(*p*)

IN WITNESS, &c.

No. IV.

DISCHARGE *of a* TRUSTEE *of a* WILL *where the* TRUST PROPERTY *is vested in the* REMAINING TRUSTEES,(*q*) *no New Trustee being appointed.* (*Equitable Interests.*)

Parties.

THIS DEED OF DISCHARGE is made, &c., BETWEEN R. T., of, &c. (*Retiring Trustee*), of the one part, and C. T., of, &c., and C. C. T., of, &c. (*Continuing Trustees*), of the other part: WHEREAS:—

(1) to (4) (*Recite Will of X. Y., appointing R. T., C. T. and C. C. T. to be executors and trustees* (*defining them as the Trustees*), *and giving residue on trust for sale, but saying at the end* "But the said Will contained no power of appointing new trustees thereof." (*r*) *Death of testator and probate. Realisation and investment of residuary estate, and assent to the real estate and chattels real vesting in* "The Trustees" *on trust for sale*):

State of trust funds.

(5) The residuary estate of the said Testator is now represented by the investments mentioned in the Schedule hereto standing in the joint names of the Trustees and by the real estate and chattels real comprised in the recited Assent on trust for sale:

Desire of a trustee to be discharged.

(6) The said R. T. is desirous of being discharged from the trusts of the recited Will:

Deed of Discharge relating to assent.

(7) By a Deed of Discharge, bearing even date herewith and made between the same parties as are parties hereto, the said R. T. has been discharged from the trusts of the recited Assent:

Form of transfers of mortgages.

(*o*) See L. P. Act, 1925, s. 114, as to transfers of mortgages, and as to the implied covenants: *ib.*, s. 82.

(*p*) The trusts of the mortgage debt are declared by reference to the personalty settlement, and are not brought on to the title to the land.

(*q*) See T. Act, 1925, ss. 39 and 40, and note to Prec. I, p. 521. It is expedient to endorse notice of the deed of discharge on the probate.

(*r*) If there is a power the donee must join.

(8) It is intended that immediately after the execution hereof the [so much of the —— Stock mentioned in the Schedule hereto shall be sold as shall be necessary to satisfy the costs relating to the preparation and execution of this Deed of Discharge and the recited deed of even date or otherwise incurred in the execution of the trusts of the recited Will, and that the balance of the said stock and the other (*s*)] investments mentioned in the Schedule hereto shall be transferred into the joint names of the said C. T. and C. C. T. alone :

Intention to transfer investments.

NOW, in exercise of the powers conferred by sections thirty-nine and forty of the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

1. THE said R. T. hereby declares that he is desirous of being discharged from the trusts of the recited Will.

Desire to retire.

2. THE said C. T. and C. C. T. hereby consent to the discharge of the said R. T. from the trusts aforesaid, and to the vesting in the said C. T. and C. C. T. alone of the trust property.

Consent to retirement.

3. THE requisite vesting declaration shall be implied herein and shall extend to all chattels and things in action (except mortgage debts intended to be separately transferred) remaining subject to the trusts of the said Will.

Vesting declaration.

IN WITNESS, &c. [*Add Schedule of investments.*]

No. V.

DISCHARGE *of a* TRUSTEE *of an* ASSENT *on* TRUST *for* SALE *where the land remains vested in the* OTHER TRUSTEES (*being either a Trust Corporation or not less than two individuals*).(*t*) (*Legal Estate.*)

THIS DEED OF DISCHARGE is made, &c. (*date and parties as in last Precedent*) : WHEREAS :—

Parties.

(1) By an Assent dated, &c., and made by the said R. T., C. T. and C. C. T., they, As the Personal Representatives of X. Y., deceased, assented to the vesting of the real estate and chattels real therein described in themselves in fee simple or for the residue of the terms for which the same were held, UPON TRUST to sell the same, with power to postpone the sale and to

Assent on trust for sale.

(*s*) These words will be omitted where the costs are paid by the beneficiaries.

(*t*) See T. Act, 1925, ss. 39 and 40, and note to Prec. I, p. 521, and to last Precedent. Also Ad. of E. Act, 1925, s. 36, and L. P. Act, 1925, s. 28, 5th Sch., Form No. 9.

stand possessed of the net proceeds of sale and other capital arising under the statutory powers and the net rents and profits until sale, Upon the trusts declared concerning the same by the Will dated, &c., and proved (*date*) of the said X. Y., or upon such other trusts as the same ought to be held from time to time ; And it was thereby declared that the statutory power to appoint new trustees was applicable :

Desire to be discharged.

(2) The said R. T. is desirous of being discharged from the trusts of the recited Assent :

Notice.

(3) It is intended that notice of the discharge hereby effected shall be endorsed on the said Assent :

NOW, in exercise of the powers conferred by sections thirty-nine and forty of the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Desire to retire.

1. THE said R. T. hereby declares that he is desirous of being discharged from the trusts of the recited Assent.

Consent to retirement.

2. THE said C. T. and C. C. T. hereby consent to the discharge of the said R. T. from the trusts aforesaid and to the vesting in the said C. T. and C. C. T. alone of the trust property.

Vesting declaration.

3. THE requisite vesting declaration shall be implied herein and shall extend to all the real estate and chattels real remaining subject to the trusts of the said Assent.

IN WITNESS, &c.(*u*)

No. VI.

DISCHARGE *of a* S. L. ACT TRUSTEE *of a* REALTY SETTLEMENT [*or* WILL] *where the* OTHER TRUSTEES (*being either a Trust Corporation or not less than two individuals*) *retain the* HEIRLOOMS, CAPITAL MONEY *and* INVESTMENTS, *no* NEW TRUSTEE *being appointed.*(*v*) (*Equitable Interests.*)

Parties.

THIS DEED OF DISCHARGE is made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Estate Owner) (*the donee of the*

Acquisition of land after testator's death.

(*u*) If, since the testator's death, other land has been acquired and conveyed to the trustees on trust for sale, this Precedent can be made to apply to the conveyances on trust for sale as well as to the assent. This Precedent can also be adapted to the case of an assent on trust for sale made by administrators in favour of themselves on the death of an intestate.

Assent by administrators on trust for sale.

Stamp.

The stamp will be 10*s*.

Legal estate in the settled land.

(*v*) The legal estate in the settled land will be in the tenant for life if there is one. Even if it is vested in the trustees as "statutory owners," *e.g.*, during a minority, there must be a separate Deed of Declaration relating to the vesting instrument. See next Precedent.

power to appoint new trustees), of the 1st part, R. T., of, &c. (hereinafter called the Retiring Trustee), of the 2nd part, C. T., of, &c., and C. C. T., of, &c. (hereinafter called the Continuing Trustees), of the 3rd part, and the Retiring Trustee and the Continuing Trustees (hereinafter together called the Present Trustees) of the 4th part: WHEREAS:—

Settlement and vesting deed.

(1) (*Recite the Deed* (hereinafter called the Settlement) *referring to the Vesting Deed, showing that certain land is vested in the Estate Owner* (*being the tenant for life*), *Upon the trusts of the Settlement; the appointment of the* "Present Trustees" *to be S. L. Act trustees; the assignment to them of certain chattels to be held as heirlooms with the settled freeholds; and the agreement by them to hold certain money and investments previously transferred to them as capital money arising from the settled freeholds; Also state that power was given to the Estate Owner during his life to appoint new trustees thereof*):

[Will and vesting instrument.]

[*or* (1) *Recite the Will, death, probate, and the Vesting Deed, if the testator died before* 1926, *or the Vesting Assent, if the testator died after* 1925, *showing the same facts as mentioned above where the settlement was by deed, but reciting the bequest of the heirlooms and the bequest of the residuary estate to devolve as capital money*:]

Existing capital money.

(2) The Schedule hereto contains particulars of the investments and money now standing in the joint names of the Present Trustees representing capital money for the purposes of the Settled Land Act, 1925, held on the trusts of the Settlement [said Will]:

Desire to be discharged.

(3) The Retiring Trustee is desirous of being discharged from the trusts of the Settlement [said Will]:

Deed of Declaration of even date.

(4) It is intended that, by a Deed bearing even date herewith and made between the same parties as are parties hereto, supplemental to the said Vesting Deed [Assent], it shall, pursuant to section thirty-five of the Settled Land Act, 1925, be declared that the Continuing Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

Notice.

(5) It is also intended that a memorandum shall, pursuant to the said section, be endorsed on the said Vesting Deed [Assent] stating that the Continuing Trustees are the present trustees for the purposes of that Act:

Intended transfer of investments.

(6) It is also intended that as soon as possible after the execution hereof the investments and money mentioned in the Schedule hereto shall, after deducting thereout the costs relating

to this Deed of Discharge, the said Deed of Declaration, and Memorandum,(*w*) be transferred into the joint names of the Continuing Trustees alone :

NOW, in exercise of the powers conferred by sections thirty-nine, forty and sixty-four of the Trustee Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Desire to retire.

1. THE Retiring Trustee hereby declares that he is desirous of being discharged from the trusts of the Settlement [said Will] and from being a trustee thereof for the purposes of the Settled Land Act, 1925.

Consent to retirement.

2. THE Estate Owner and the Continuing Trustees hereby consent to the discharge of the Retiring Trustee from the trusts and purposes aforesaid and to the vesting in the Continuing Trustees alone of the trust property (other than real estate and chattels real vested in the Estate Owner).

Vesting declaration.

3. THE requisite vesting declaration shall be implied herein and shall extend to the said heirlooms and to things in action, subject to the trusts of the Settlement [said Will], other than mortgage debts intended to be separately transferred.

IN WITNESS, &c. [*Add Schedule of investments and money.*]

No. VII.

DEED OF DECLARATION *on the* DISCHARGE *of a* S. L. ACT TRUSTEE, *no* NEW TRUSTEE *being appointed.* SUPPLEMENTAL *to the* VESTING INSTRUMENT.(*x*) (*Legal Estate.*)

Parties.

THIS DEED OF DECLARATION, made, &c. (*date and parties as in last Precedent*), Supplemental to a Vesting Deed [Assent] dated, &c., and made, &c. (relating to land at ——): WITNESSETH (pursuant to section thirty-five of the Settled Land Act, 1925) that the Continuing Trustees alone are the trustees of the Settlement [Will] referred to in the said Vesting Deed [Assent] for the purposes of the Settled Land Act, 1925, the Retiring Trustee having been discharged.

Declaration as to present S. L. Act trustees.

IN WITNESS, &c.

(*w*) The memorandum to be endorsed on the vesting instrument and to be signed by or on behalf of the trustees will run thus—

Form of memorandum

(*Date*) TAKE NOTICE that C. T., of, &c., and C. C. T., of, &c., are alone the present trustees for the purposes of the Settled Land Act, 1925, of the settlement [Will] within referred to.

(*x*) See notes to last Precedent; also S. L. Act, 1925, ss. 35 and 110. The stamp will be 10*s*.

SECTION III.

INSTRUMENTS RELATING TO THE WINDING UP OF TRUSTS AND ESTATES.

PRELIMINARY NOTE.

Releases when required.

PERSONAL representatives and trustees are entitled to have their accounts examined and settled before they hand over the balance to the beneficiaries, and it is usual and proper in such case for the beneficiaries to execute a formal deed of release. But if a trust is declared of a specified fund in favour of a specified person, so that there are, in fact, no accounts to be settled, and the trustee merely hands over the fund in its original state, in strict accordance with the declared trust, he is not entitled to require a release under seal: *Chadwick* v. *Heatley* (1845), 2 Coll. 137; *King* v. *Mullins* (1852), 1 Drew. 308.

How releases ought to be drawn.

Releases should be drawn so as to show on the face of the deed that the releasors are fully aware of all the circumstances connected with the subject of the release, of their own rights and position, and of the position of the intended releasees as to breaches of trust, liability, &c., and they should also explicitly state the claims to be released. Releases will be generally governed by the recitals, so that where the words of the release are general, but the recitals refer only to a particular matter, the release will be construed to relate only to the matter recited: *Ramsden* v. *Hylton* (1751), 2 Ves. Sen. 304; *Pritt* v. *Clay* (1843), 6 Beav. 503.

Indemnity.

The releasing parties generally execute a covenant for indemnity as well as a release, but this is not essential except where there are other persons than the releasors who can be interested in or may have claims on the matter or property to which the release relates.

Releases extend to past acts, but indemnities may extend to the past or future. Where a liability has been incurred (*e.g.*, the acceptance of a mining lease) which cannot be discharged forthwith, a covenant for indemnity ought to be given.

Protection against rent and covenants.

But under T. Act, 1925, s. 26 (as amended), where a trustee or personal representative, liable for rent, whether under a lease or fee farm grant or for a covenant thereunder or for an indemnity given in respect thereof, satisfies all liabilities under the lease or grant accrued and claimed up to the date of the conveyance made for winding up the trust and where necessary sets apart a fund to answer a future claim in respect of "any fixed and ascertained sum" agreed to be laid out on the property, he may convey the property to a purchaser or to a beneficiary or other person entitled to call for a conveyance and may distribute the estate or trust fund among the persons entitled, without any further appropriation, if any. He will not be personally liable for future claims.

Fixed and ascertained sum.

Protection by advertisements.

Protection by advertising for claims can now be obtained by trustees as well as by personal representatives: T. Act, 1925, s. 27, as amended by L. P. (Amend.) Act, 1926, Sch.

Protection in regard to notice.

A trustee or personal representative having notice by acting in another trust will be protected in the absence of fraud by *ib.*, s. 28.

Setting aside indemnity fund.

Unless there is a privity of estate between executors and a lessor, the court will not set aside assets to indemnify them against possible liabilities which may arise in respect of leases formerly held by their testator: *Re Nixon* [1904], 1 Ch. 638; 73 L. J. Ch. 446; see also *Re King* [1907], 1 Ch. 72; 76 L. J. Ch. 44.

Releases by trustees to trustees.

Where trust money is handed over by the trustees of one settlement to the trustees of another settlement a release is frequently given, but, *semble*, cannot be insisted upon: *Re Cater* (1858), 25 Beav. 366. In any such case no indemnity can be required from trustees who are giving a release or receipt. Trustees for sale and personal representatives can give releases under T. Act, 1925, s. 15; they also have the powers to make compromises, &c., given to tenants for life by S. L. Act, 1925, s. 58.

Power to give releases, &c.

Qualified covenants.

A qualified covenant by trustees such as "but not so as to create any personal liability" was held not to relieve them in *Watling* v. *Lewis* [1911], 1 Ch. 414; 80 L. J. Ch. 242; but this case has been practically overruled by Buckley, L.J., in *Re Robinson*, 1912, 1 Ch. 717, 728; 81 L. J. Ch. 393.

Power to transfer share in proceeds to S. L. Act trustees.

Under L. P. Act, 1925, s. 35, as amended by L. P. (Amend.) Act, 1926, Sch., trustees for sale holding on the "statutory trusts" consequential on land being formerly held in undivided shares, may, after a sale of the entirety, hand over a proper proportion of the proceeds of sale to the S. L. Act trustees of a subsisting settlement to be held as capital money, *semble*, they could similarly hand over a share to trustees formerly holding a share on trust for sale as being the best mode of giving effect to the beneficial interests.

Cases in which retiring trustees are entitled to a release.

Retiring trustees are not, as a general rule, entitled to a release from the beneficiaries, but sometimes it is expressly stipulated that they shall have one, *e.g.*, where the dealings with the trust funds have not been regular, and the irregularities have been committed at the instance of the beneficiaries, who are *sui juris*, and see T. Act, 1925, s. 62. Again, if, besides the appointment of new trustees, some alteration is made in the trusts with the consent of the beneficiaries, such an arrangement may properly be treated as a winding up of the old trust and the creation of a new one, and it would be proper to give the retiring trustees a release. If a trustee retires with a view to enable a breach of trust to be committed, he may be held liable for the breach: see *Head* v. *Gould* [1898], 2 Ch. 250.

Stamp.

The stamp on releases of trustees is 10*s*.

On the other hand, releases on a sale or mortgage are liable to *ad valorem* duty. As to whether a release amounts to a sale, see *G. N. Ry. Co.* v. *I. R. C.* [1901], 1 K. B. 416; 70 L. J. K. B. 336.

Release on termination of a realty settlement.

For a form of release on the termination of a realty settlement, in the lifetime of the tenant for life, by the S. L. Act trustees, pursuant to S. L. Act, 1925, s. 17, see Settlements (Real), Precs. XIII and XIX, pp. 368, 388.

GROUP A.—RELEASES TO TRUSTEES OF SETTLEMENTS, AND ASSENT BY REPRESENTATIVES OF A TENANT FOR LIFE.

No. I.

RELEASE *to* TRUSTEES *of a* PERSONALTY SETTLEMENT *on the final* DISTRIBUTION *of the* TRUST FUNDS. *Variations where a beneficiary is an infant.*

Parties (*a*).

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (*a beneficiary who takes in default of appointment and to whom an*

Form of covenants with two or more persons.

(*a*) A covenant made with two or more persons jointly will, when made after 1925, be construed as being also made with each of the covenantees: L. P. Act, 1925, s. 81; hence the words "and with each of them" can now be safely omitted.

Release of trustees where one of

As an infant cannot bind himself by executing a release, he is generally expressed to be made a party and a recital inserted to the effect that he is an infant and that it is intended that he shall execute on attaining full age.

advance has been made), of the 1st part, C. D., of, &c., and F. D., his wife (*F. D. is a beneficiary who takes under an appointment and has settled her share*), of the 2nd part, M., of, &c., and N., of, &c. (hereinafter called the Sub-Settlement Trustees) (*Trustees of F. D.'s Settlement*), of the 3rd part, Z., of, &c. (hereinafter called the Administrator) (*the Administrator of E. B., a beneficiary who took a vested interest in default of appointment and died intestate*), of the 4th part, and C. T., of, &c., and N. T., of, &c. (hereinafter called the Settlement Trustees) (*the Trustees of the Principal Settlement*), of the 5th part: WHEREAS:—

Principal Settlement.

(1) This Deed is supplemental to a Settlement (hereinafter called the Principal Deed) dated, &c., and made between X. B. (since deceased) of the 1st part, Jane H., Spinster (afterwards and hereinafter called Jane B.), of the 2nd part, and D. T. (since deceased) and the said C. T. of the 3rd part (being a Settlement made in consideration of the marriage, shortly afterwards solemnised, between the said X. B. and Jane B.), whereby certain investments and reversionary interests (hereinafter, with the investments for the time being representing the same, collectively called the Trust Fund) were directed to be held by the parties thereto of the 3rd part UPON TRUSTS for the benefit of the said X. B. and Jane B. successively during their lives, and after the death of both, as to capital and income, IN TRUST for the issue of the said marriage in such shares and manner as the said X. B. and Jane B. by deed jointly or the survivor of them by deed or will should appoint, And in default of and

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Before such execution he should obtain independent advice: *Re Garnett* (1885), 31 Ch. D. 1.

the beneficiaries is an infant.

In such a case as above mentioned part of the funds must be retained and the following clauses should be inserted:—

Variations in the case of an infant.

THE parties hereto of the —— parts hereby jointly and severally covenant with the Trustees that they, the said covenanting parties and each of them, will use their best endeavours if and when the said —— attains full age to induce him to execute this Release or a proper deed of confirmation thereof:

PROVIDED that this deed shall, notwithstanding that the said —— shall neglect or refuse on attaining full age to confirm this deed, be binding on the other parties hereto as from the date hereof.

Presumption.

There is a presumption that parties to any "conveyance" are of full age: L. P. Act, 1925, ss. 15, 205 (1) (ii), and "conveyance" includes an assurance of any property otherwise than by Will.

subject to any such appointment, IN TRUST for the children or child of the said marriage who should attain the age of twenty-one years, or, being daughters, marry under that age, and if more than one, in equal shares, with the usual hotchpot provision and power of advancement [*or* and the statutory power of advancement was allowed to apply], And the Principal Deed contained a power for the said X. B. and Jane B. during their joint lives and for the survivor of them during his or her life to appoint a new trustee or new trustees thereof:

Children of the marriage.

(2) There was issue of the said marriage three children and no more (namely), the said A. B., F. D. and E. B. (deceased), all of whom attained the age of twenty-one years:

Marriage of daughter, appointment to her and settlement of the appointed share.

(3) On the (*date*) the said F. D. (then F. B.) intermarried with the said C. D., and in contemplation of such marriage by a Deed dated the (*date*) under the hands and seals of the said X. B. and Jane B., one-third share of the Trust Fund was (subject to the respective life interests of the said X. B. and Jane B.) appointed to the said F. D. absolutely, which share was by a Deed (hereinafter called the Sub-Settlement) dated, &c., and made between the said C. D. of the 1st part, the said F. D. (then F. B., Spinster) of the 2nd part, and the Sub-Settlement Trustees of the 3rd part, assigned by the said F. D. to the Sub-Settlement Trustees upon certain trusts for the benefit of herself, her husband and issue, but no issue of such marriage has yet attained a vested interest in the property thereby settled:(*b*)

Death of one son, who had attained a vested interest, unmarried and intestate.

(4) The said E. B. (who had attained the age of twenty-one years as aforesaid, and was accordingly defeasibly entitled to a one-third share (liable to decrease) in default of appointment in the Trust Fund (*c*)) died on (*date*) intestate without ever having been married:

Death of a trustee and appointment of new trustees of the principal Settlement.

(5) The said D. T. died on the —— day of —— and by an Appointment dated, &c., and made between the said X. B. and Jane B. of the 1st part, the said C. T. of the 2nd part, the said N. T. of the 3rd part, and the Settlement Trustees of the 4th part, the said N. T. was appointed to be a trustee of the Principal Deed in the place of the said D. T. (deceased) and to act jointly with the said C. T., and the investments then held on the trusts of the Principal Deed (the said reversionary interest having

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(*b*) If the children are of full age they should join or sign the accounts.

(*c*) The donees of the power of appointment could have avoided the effect of this intestacy by appointing the whole of the trust fund to the other two children after the death of E. B.

fallen into possession) were thereupon transferred into the joint names of the Settlement Trustees :

Advance to a son.

(6) In the year —— the sum of £—— was, with the consent in writing of the said X. B. and Jane B., advanced under the power for that purpose contained in the Principal Deed [*or* under the statutory power] to the said A. B. as part of his expectant share in the Trust Fund :

Death of father and mother without further appointing.

(7) The said X. B. died on the (*date*), and the said Jane B. died on the (*date*), without either of them having executed any further appointment of any interest in the Trust Fund :

Letters of Administration to the estate of the deceased child.(d)

(8) On the (*date*), Letters of Administration to the estate of the said E. B. were granted out of the —— Probate Registry to the Administrator :

Reference to first schedule —original investments.

(9) The First Schedule hereto contains particulars of the Trust Fund at the date of the execution of the Principal Deed :

Reference to second schedule.(e)

(10) The Second Schedule hereto contains particulars of the various dealings with the capital of the Trust Fund and particulars of the investments representing the same immediately before the sale and transfer thereof hereinafter mentioned :

Payment of income up till death of both father and mother.

(11) All income received in respect of the Trust Fund during the lives of the said X. B. and Jane B. was duly paid to them and the survivor of them in manner directed by the Principal Deed, and the income accruing during the lifetime of the said

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(*d*) If the parents survived the son (dying after 1925), they might have taken out administration to the estate of the deceased child, released their powers of appointment, and claimed one-third of the fund subject to duties being paid. For the order in which the statutory next-of-kin take where the intestate dies after 1925, see Ad. of E. Act, 1925, s. 46.

Recital of dealings with trust fund where complicated accounts have been kept.

(*e*) Where complicated accounts have been carefully kept, or it is not desired to refer to all the dealings in the release, the following recital can be substituted :—

(10) The parties hereto of the first four parts have examined the capital accounts kept by the Settlement Trustees, and have fully approved of the dealings with the Trust Fund as therein mentioned, and as evidence of such approval have respectively signed all [the last of] such accounts at the foot thereof.

Or where accounts have been made out for the purposes of the release, the following recital can be used :—

(10) The Settlement Trustees have rendered to each of the parties hereto of the first four parts accounts of the Trust Fund and of the application, disposal and distribution thereof, and each of such parties has examined and approved such accounts, and as evidence of such approval has signed the same at the foot thereof.

Jane B., but received after her death, has been duly accounted for to her personal representatives:

As to income accruing after the death of the mother.

(12) The Settlement Trustees have duly accounted for all income accruing since the death of the said Jane B., as the parties hereto of the first four parts hereby acknowledge:

[Sale of stock for payment of duties and costs.]

[The Settlement Trustees have, with the approval of the other parties hereto, sold the investment numbered — in the Second Schedule hereto, and have out of the net proceeds applied the sum of £—— in payment of the duties payable on the deaths of the said X. B.,(*f*) Jane B., or either of them, and have paid the sum of £—— in respect of the costs of and incidental to the preparation and execution hereof and of the transfers hereinafter mentioned, and have applied the balance of the said proceeds of sale in manner appearing in the Third Schedule hereto:(*g*)]

Apportionment and transfer of Trust Fund.

(13) The Settlement Trustees have, with the approval of the other parties hereto apportioned, paid and transferred the balance of the Trust Fund (after payment of duties and costs) in manner appearing in the Third Schedule hereto, and have in such distribution made the necessary deductions in respect of the sum of £—— advanced to the said A. B. as aforesaid:

Agreement for release.(*h*)

(14) The parties hereto of the first four parts, being satisfied with all matters and things relating to the execution of the trusts of the Principal Deed, have agreed that on such payments

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Duties.

(*f*) *Semble*, estate duty was payable on the death of X. B. in respect of property settled by him, but no duty would be payable on the property (if any) settled by Jane B., the survivor, until her death, whether she gave her husband the first life interest in her property or not: Fin. Act, 1894, s. 21 (5); *Re Waller* [1916], 1 Ch. 153; 85 L. J. Ch. 188.

Succession duty between husband and wife.

Succession duty is now made payable in certain cases as between husband and wife: Fin. (1909-10) Act, 1910, s. 58 (2).

Duties on death of deceased child.

(*g*) It is generally more convenient to omit this recital, bringing the capital account up to date and showing therein the payment of the duties and costs. With regard to the estate duty payable on the share of E. B., the deceased child, the personal representatives are accountable for such duty on all property of which the deceased was at the time of his death competent to dispose: Fin. Act, 1894, ss. 8 (3) and 2 (1) (a). On E. B.'s death he had a vested reversionary share liable to be divested by an appointment, and s. 2 (1) (a) includes free personalty in reversion, see Austen-Cartmell, 5th ed., 13. Hence, it would seem that the administrator is the proper person to pay the duty and not the settlement trustees. S. 8 (4) only makes trustees accountable where the personal representative is not.

Persons accountable.

See now as to persons accountable for duties payable in respect of land: L. P. Act, 1925, s. 16; and as to registered land: L. R. Act, 1925, s. 73.

Breaches of trust.

(*h*) If any breaches of trust are known to have occurred they should be expressly stated and referred to as such either in the accounts or in the recitals.

Advertisement.

If there has been any advertisement for claims this should be recited.

and transfers being made as aforesaid such release and covenants for indemnity should be given as are hereinafter contained: NOW, in pursuance of the said agreement and in consideration of the several sums and investments paid or transferred as aforesaid and of the premises, THIS DEED WITNESSETH as follows:—

Release.

1. THE parties hereto of the first four parts, according to their respective rights and interests, do and each of them doth hereby release and discharge the Settlement Trustees and each of them and the estates and effects of each of them, and also the estate and effects of the said D. T. (deceased),

(i) from all the investments and money mentioned in the First, Second and Third Schedules hereto,

(ii) from all other (if any) the investments and money received or which ought to have been received in respect of the reversionary interests assigned by the Principal Deed,

(iii) from all other (if any) the investments or money held upon the trusts of that Deed and from all income thereof, and

(iv) from all proceedings, costs, claims and demands in respect thereof or in respect of any sale, investment, receipt, payment, breach of trust, act, deed, matter or thing whatsoever and wheresoever, whether hereinbefore or in the Schedules hereto mentioned or referred to or not, ever made, done, executed, omitted or neglected in the execution of the trusts of the Principal Deed, or otherwise howsoever in relation to the premises.(*i*)

Covenant for indemnity.(*j*)

2. THE said A. B., C. D. and F. D. hereby jointly and severally covenant with the Settlement Trustees that they, the said covenanting parties and each of them and their respective estates and effects, will from time to time and at all times hereafter save harmless and keep indemnified the Settlement Trustees and each of them and their respective estates and effects, and also the estate and effects of the said D. T. (deceased) from and against all proceedings, costs, claims and demands, losses, charges, damages and expenses which they or either of them, or the estates or effects of them or either of them, or the estate and effects of

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Release to term trustees.

(*i*) This clause can be readily adapted to a release to term trustees on payment of the money secured by the term. The recitals will show (1) the creation of the term; (2) the beneficiaries under the term, *e.g.*, the number of children or issue who take under the portions term, and the devolution of their interests; (3) the instrument (if any) under which the money was raised; and (4) the payment off of all the beneficiaries under the term.

(*j*) This covenant does not attract further stamp duty. The sub-settlement trustees and the administrator do not join in this covenant.

the said D. T. (deceased), may sustain, incur or pay by reason of any sale, investment, receipt, payment, breach of trust, act, deed, matter or thing whatsoever or wheresoever, whether hereinbefore or in the Schedules hereto mentioned or referred to or not, ever made, done, executed, omitted or neglected in the execution of the trusts of the Principal Deed or otherwise howsoever in relation to or affecting the premises.

Acknowledgment of right to production.

3. THE Sub-Settlement Trustees hereby acknowledge the right of the Settlement Trustees to production of the Sub-Settlement and to delivery of copies thereof.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of investments and reversionary interest as originally settled by the Principal Deed.

(*If there are two funds divide into two parts.*)

THE SECOND SCHEDULE.

Particulars of dealings with the Trust Fund.

(*This will contain a Debtor and Creditor Account brought up to date, and will show by a statement at the end the present state of the Trust Fund applicable for distribution after payment of duty and costs.*)

THE THIRD SCHEDULE.

Particulars of the distribution of the Trust Fund.

First Part.

Cash and investments transferred to the said A. B.

Second Part.

Cash and investments transferred to the Sub-Settlement Trustees.

Third Part.

Cash and investments transferred to the Administrator.

No. II.

RELEASE *to* TRUSTEES *of a* REALTY SETTLEMENT (*where the entail has been barred*) *in respect of the land comprised in an* ASSENT, *heirlooms and capital money.* (*Equitable Interests.*)

Parties.

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Estate Owner), of the one part, and C. T., of, &c., and C. C. T., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:—

(1) This Deed is supplemental to—

Settlement, &c., under which A. B. is seised in fee simple.(*k*)

(i) A Settlement (hereinafter called the Principal Deed) dated, &c., and made, &c. (being a Settlement of certain freehold, copyhold and leasehold properties in the Counties of ——, and certain capital money for the purposes of the Settled Land Acts and chattels settled to devolve as heirlooms with the said freehold properties);

(ii) The appointments of New Trustees [Deeds of Discharge] and Deeds of Declaration mentioned in the First Schedule hereto from which it appears that at the date of the Disentailing Assurance hereinafter mentioned the Trustees were the trustees of the Principal Deed for the purposes of the Settled Land Act, 1925;

(iii) A Vesting Deed dated, &c., and made between, &c., from which it appears that the freehold properties, enfranchised lands and leasehold properties then subject to the limitations of the Principal Deed were then vested in the said John B. (the father of the Estate Owner), Upon the trusts affecting the same under the Principal Deed or otherwise;

(iv) The Conveyances to Uses, Subsidiary Vesting Deeds and Compensation Agreements mentioned in the Second Schedule hereto, from which it appears that certain other lands were acquired and made subject to the Principal Deed, and that the manorial incidents affecting the said enfranchised lands had at the date of the said Disentailing Assurance been extinguished:

(*k*) It is assumed here that the land was limited to A. B.'s father for life, with remainder (subject to a rentcharge) to the first and other sons of A. B.'s father in tail male, &c.

How far an instrument may be made supplemental to other documents.

It is a mistaken idea to suppose that after 1925 an instrument may not properly be made supplemental to a document unless that document will be handed over to the person claiming under the instrument. L. P. Act, 1925, s. 58, says, "as if the supplemental instrument contained a full recital of the previous instrument"; a purchaser may accept the same evidence that the previous instrument did not affect the title as if it had merely been mentioned: *ib*

(v) The Will dated, &c., of the said John B., who died on (*date*), and which was on the (*date*) duly proved by the Trustees at the —— Probate Registry, the grant to them being specially limited to the land remaining subject to the Principal Deed ;

(vi) A Disentailing Assurance dated, &c., and made between the Estate Owner of the one part and the Trustees of the other part ;

(vii) An absolute Assent dated, &c., made between the Trustees of the one part and the Estate Owner of the other part, whereby the Trustees assented to the lands therein described (being the lands remaining subject to the trusts of the Principal Deed) vesting in the Estate Owner in fee simple or absolutely without nominating trustees for the purposes of the Settled Land Act, 1925 :

Title of the estate owner.

(2) By reason of the death of the said John B., as aforesaid, and of his wife Jane B., on the (*date*), having had issue (*l*) one child only, namely the Estate Owner (who was born on the (*date*)), and by virtue of the said Disentailing Assurance the Estate Owner became entitled in fee simple or absolutely to all the property of every description, subject to the trusts of the Principal Deed, and the Trustees (being satisfied that he had not re-settled or otherwise dealt with his interest in the real estate and chattels real) executed the absolute Assent hereinbefore mentioned :

Sales, &c., of the land and application of the capital money.(*m*)

(3) From time to time divers sales and exchanges of the properties settled by the Principal Deed have been made and part of the capital money settled by the Principal Deed, or arising from sales or representing money received by way of equality on an exchange, has been applied in the purchase of other properties which were made subject to the Principal Deed as aforesaid, or applied in making improvements upon the settled land or otherwise as authorised by the Principal Deed and the Settled Land Act, 1925 ; And short particulars of such sales and exchanges, and of the money and investments representing the residue of the said capital money, are contained in the Third and Fourth Schedules hereto :

(*l*) This shows that A. B. had attained full age, and that no portion became raisable.

Form of assent.

For a form of the assent by the representatives of the deceased tenant for life, see next Precedent and notes thereto.

Breaches of trust.

(*m*) If any breaches of trust are known to have occurred they should be expressly stated and referred to as such either in the schedules or in the recitals.

Dealings with heirlooms.

(4) Certain of the chattels settled as heirlooms by the Principal Deed have from time to time been sold and exchanged under the statutory powers as extended by that Deed:

Transfer of investments and delivery of chattels.

(5) All the investments and money held by the Trustees as capital money, as appears from the Fourth Schedule hereto, have been transferred (subject to discharging thereout the duties payable on the deaths of the said John B. and Jane B., and the costs relating to this release and the recited Assent) into the name of the Estate Owner, and all the chattels or heirlooms remaining subject to the trusts of the Principal Deed have been handed over to him, as he hereby acknowledges:

Advertisements for claims.

(6) The Trustees have with the consent of the Estate Owner issued the usual statutory advertisements for claims:(*n*)

Agreement for release.

(7) Upon the execution of the said Assent and transfers and the delivery of the heirlooms, the Estate Owner being satisfied in all respects with the matters and things relating to the execution of the trusts of the Principal Deed, agreed to execute such release and covenant for indemnity as are hereinafter contained:

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

Release in regard to land, capital money and heirlooms.(*o*)

1. The Estate Owner hereby releases the Trustees and each of them and their respective estates and effects, and also the respective estates and effects of all former trustees of the Principal Deed, from the real estate and chattels real comprised in the recited Assent and from the investments, capital money, chattels or heirlooms so transferred or handed over as aforesaid, and from all other the property or things in action which may at any time have been subject to the limitations or trusts of the Principal Deed and from the rents, profits and income thereof, and from all proceedings, costs, claims and demands in respect of the premises or in respect of any assignment, transfer, disposition, investment, application of capital money, acquisition of property, receipt, release, payment [whether for discharging any family charge or incumbrance or not], breach of trust, act, deed, matter or thing whatsoever, and whether hereinbefore or in any Schedule hereto mentioned or referred to or not, ever made, done, executed, omitted or neglected in the execution or

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(*n*) As to statutory advertisements: T. Act, 1925, s. 27, as amended by L. P. (Amend.) Act, 1926, Sch.

Portions term.

(*o*) If a portions term has been limited to the trustees and they have discharged the portions, this should be recited and the release extended to their acts in reference to the trusts of the term.

purported execution of the trusts and powers of the Principal Deed or of any statutory power [and whether during a minority or not], or otherwise howsoever in relation to the premises.

Covenant for indemnity.(*p*)

2. The Estate Owner hereby covenants with the Trustees that the Estate Owner and his estate and effects will at all times hereafter save harmless and keep indemnified the Trustees and each of them and their respective estates and effects, and also the respective estates and effects of all former trustees of the Principal Deed and the estate and effects of the said John B. (deceased), from all liabilities whatsoever which the Trustees or their predecessors in office or any of them or the said John B. or his estate and effects may have sustained or incurred or may hereafter incur by reason of the acceptance or acquisition of any property or the taking out of limited probate to the estate of the said John B. or the making of the said Assent in favour of the Estate Owner or by reason of any disposition, release, covenant, agreement, obligation, breach of trust, act, deed, matter or thing whatsoever, and whether hereinbefore or in any Schedule hereto mentioned or referred to or not ever accepted, made, done, omitted or neglected in the execution or purported execution of the trusts or powers of the Principal Deed or any statutory power [and whether during a minority or not], or otherwise howsoever in relation to the premises.(*q*)

In witness, &c.

The First Schedule.

Particulars of appointments of new Trustees, Deeds of Declaration and other facts relating to changes among the Trustees.

The Second Schedule.

Short particulars of dispositions to the uses or upon the trusts of the Principal Deed, Subsidiary Vesting Deeds, and Compensation Agreements.

The Third Schedule.

Short particulars of sales and other dispositions of properties formerly subject to the limitations of the Principal Deed.

Usual liabilities.

(*p*) The most usual liabilities incurred are in connexion with the acceptance of leasehold property, particularly mining leases, but see T. Act, 1925, s. 26. After 1925 all leaseholds will be vested in the tenant for life.

Right to production of documents.

(*q*) In a few cases it may be desirable to give to the trustees an acknowledgment of their right to production of any documents which might be required if any proceedings were taken against them.

THE FOURTH SCHEDULE.

First Part.

Particulars of capital money and investments originally settled by the Principal Deed.

Second Part.

Debtor and Creditor Capital Account.

Third Part.

Particulars of capital money and investments recently transferred to the Estate Owner.

No. III.

ABSOLUTE ASSENT *to the vesting of lands made on the* WINDING UP *of the trusts of a* REALTY SETTLEMENT *by the* PERSONAL REPRESENTATIVES *of a deceased* TENANT *for* LIFE.(r) (*Legal Estate.*)

Parties.

THIS ASSENT is made (*date*), BETWEEN C. T., of, &c., and C. C. T., of, &c. (hereinafter called the Executors), of the one part, and A. B., of, &c. (hereinafter called the Estate Owner), of the other part : WHEREAS :—

Grant of special probate.

(1) John B., who died on (*date*), being at his death entitled to the real estate and chattels real, mentioned in the First and Second Schedules hereto, duly made his Will dated, &c., and thereby appointed the Executors to be his executors in regard to the settled land comprised in the Settlement hereinafter mentioned, and the said Will was on (*date*) duly proved by the Executors at the —— Probate Registry, the said Grant being limited to the settled land aforesaid :

Title of estate owner.

(2) The Executors being satisfied that the Estate Owner has become absolutely entitled to the said lands free from any family charges and has not re-settled or otherwise dealt with his interest therein, have, at his request, agreed to execute such

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(r) It is better to give a separate covenant for indemnity against rents and other liabilities, see last Precedent.

Assents not nominating S. L. Act trustees.

As to this assent : Ad. of E. Act, 1925, ss. 22 to 24 and 36 ; compare S. L. Act, 1925, s. 17, which applies when the settlement determines during the lifetime of a tenant for life. As no S. L. Act trustees are nominated a purchaser must assume that the land is no longer settled land : *ib.*, s. 110 (5).

Notice.

Notice of the assent must be endorsed on the probate : Ad. of E. Act, 1925, s. 36.

Stamp.

No stamp is required.

Assent in his favour as is hereinafter contained [subject to the legal mortgages and perpetual rent-charges mentioned in the Third Schedule hereto so far as they affect the premises]:

Absolute assent.

NOW, in consideration of the premises, the Executors, As the Personal Representatives of the said John B., deceased, hereby assent to the vesting in the Estate Owner of:

Freeholds.

FIRST, ALL AND SINGULAR the freehold properties and rights mentioned in the First Schedule hereto, And all other (if any) the freehold properties and rights comprised in the vesting instruments mentioned in that Schedule (directing certain properties to be held on the trusts of a Settlement dated, &c., and made, &c., which has determined), so far as the same have not been sold or exchanged:

Leaseholds.

AND SECONDLY, ALL AND SINGULAR the leasehold properties and rights mentioned in the Second Schedule hereto, And all other (if any) the leasehold properties and rights comprised in the vesting instruments mentioned in that Schedule so far as the same have not been sold or exchanged:

AS to the freehold premises in fee simple, and as to the leasehold premises for the residue of the respective terms for which the same are held [And as to such of the premises as are affected thereby, subject to the legal mortgages and perpetual rent-charges mentioned in the Third Schedule hereto].

AS WITNESS, &c. (*Add Schedules; see that the parcels are not given by reference to settlements, disentailing assurances, or other documents relating to equitable interests*: S. L. Act, 1925, s. 5 (2).)

GROUP B.—RELEASES TO EXECUTORS, ADMINISTRATORS AND TRUSTEES OF WILLS AND ASSENTS AND TRANSFERS BY PERSONAL REPRESENTATIVES.

No. I.

RELEASE *by* RESIDUARY LEGATEES *to* EXECUTORS, *relating to money and investments, where the residuary personalty is not settled (a short form).*

Admission by residuary legatees that they have examined accounts and received balance due to them.

THIS RELEASE is made this (*date*), By Us, A. B., of, &c., and C. D., of, &c., being the residuary legatees under the Will of X. Y., late of, &c., who died on the —— day of ——, 19—, We having examined [and signed as approved] the accounts of the estate and effects of the said testator and of the administration thereof produced to us by E. F., of, &c., and G. H., of, &c., the executors of the said Will [and a copy of which account is contained in the Schedule hereto,(*s*)] declare that we have found the same to be correct, and we admit that the sum of £——, being the balance appearing by the said account to be due to us as residuary legatees, has been duly paid to us [*or* We admit that the money and investments appearing by the said account to represent the residuary estate of the said testator have been duly distributed and divided among us as stated in that account]:

Release.

AND we release the said E. F. and G. H. from all proceedings, costs, claims and demands whatsoever in relation to the estate and effects of the said testator or the income thereof.

IN WITNESS, &c. [*Add Schedule, if required.*]

No. II.

RELEASE *by* STATUTORY NEXT-OF-KIN *relating to money and investments to* ADMINISTRATOR (*a Short Form*).(*t*)

Admission by next-of-kin that they have examined accounts and received balance due to them.

THIS RELEASE is made this (*date*), BY US, A. B., of, &c., and C. B., of, &c., being the statutory next-of-kin of X. Y., late of, &c., who died on the (*date*), intestate WE have examined [and signed as approved] the accounts of the estate and effects of the said intestate and of the administration thereof produced to us by E. F., the administrator of the estate and effects of the said intestate [a copy of which account is contained in the Schedule hereto], and have found the same to be correct, and We admit that the sum of £——, being the balance appearing by the said account to be due to us as such next-of-kin, has been duly paid to us [*or* We admit that the money and investments appearing by the said account to represent the residuary estate of the said intestate (after the discharge of liabilities) have been duly distributed and divided among us as stated in the said account]:

(*s*) If a copy of the account is not inserted in the schedule, this will be omitted. This precedent is not applicable to real estate or chattels real.

(*t*) A release by next-of-kin will be construed strictly, and will not extend to property which is not mentioned in the release and subsequently falls into possession, unless the words of the release are extended to cover any property which may subsequently devolve: *Lindo* v. *L.* (1839), 1 Beav. 496; 8 L. J. Ch. 284. For a full form, see Prec. VIII, p. 557.

This Precedent, No. II, is not applicable to real estate or chattels real.

"Statutory next-of-kin" Representation, to whom granted.

As to who are the "statutory next-of-kin": Ad. of E. Act, 1925, ss. 46, 47, 50 (1); as to the persons to whom representation will be granted: Jud. Act, 1925. s. 162; Non-Contentious Probate Rules, 1925, and official instructions, as to which see 2 Wolst. & Cherry, 11th ed. As to the number of representatives: *ib.*, s. 160; as to separate representation of real and personal estate and trust estates: *ib.*, s. 155; as to grants to trust corporations: *ib.*, s. 161; as to representation as respects settled land: Ad. of E. Act, 1925, ss. 22–24.

Release.

AND we release the said E. F. from all proceedings, costs, claims and demands whatsoever in relation to the estate and effects of the said intestate or the income thereof.

IN WITNESS, &c. [*Add Schedule, if required.*]

No. III.

RELEASE *by* RESIDUARY LEGATEES *to the* TRUSTEES *and* EXECUTORS *of a* WILL *giving Mixed Residue on* TRUST *for* SALE *on the ultimate Distribution of the* PROCEEDS *of the Testator's* REAL *and* PERSONAL *Estate.* (*Equitable Interests.*)

Parties

THIS RELEASE is made, &c., BETWEEN A. B., of, &c., and C. B., of, &c. (hereinafter called the Beneficiaries), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:—

Will.(u)

(1) to (3) (*Recite Will of X. B.* (hereinafter called the Testator), *whereby the testator devised and bequeathed to the Trustees all his real and personal estate, Upon trust to sell and convert the same into money, with power to postpone, and to stand possessed of the same, after the payment of his debts and legacies, Upon trust for the testator's wife for life, and after her death In trust for his children, &c., in equal shares, and appointed the Trustees to be his executors and trustees. The said Will extended the statutory power of appropriation by authorising the same to be exercised by his trustees at their discretion without obtaining any of the consents required by Ad. of E. Act,* 1925, *s.* 41. *Death of testator, leaving his wife, who has died, and the Beneficiaries, his only children; and probate of his Will*:)

Assets at testator's death.

(4) The Testator was at his death entitled to the real and personal estate mentioned in the First Schedule hereto:

Sale of some freeholds and conversion of personal estate, balance invested after paying testamentary expenses and debts.

(5) As appears from the Second Schedule hereto, the Trustees shortly after the death of the Testator sold part of his real estate and converted into money such part of his personal estate as did not consist of money or of authorised investments, and out of the net proceeds of sale of the said real estate and the calling in and conversion of the said personal estate, and out of such part of the said personal estate as originally consisted of money, paid the funeral and testamentary expenses, death duties and debts of the testator and the legacies bequeathed by his Will:

(u) See the recital of a similar Will in Prec. VI, *infra*.

(6) The Trustees invested the balance in manner appearing in the Second Schedule hereto :

Investment of balance.

(7) No assent on trust for sale of the real estate remaining unsold has ever been made, but the said estate has been retained by the Trustees as such executors as aforesaid :

No assent on trust for sale.

(8) The said —— (*testator's wife*) died on (*date*) [without having remarried] :

Death of widow.

(9) The income of the investments representing the said residuary estate (including the net rents and profits of the real estate retained unsold) was duly paid to the said —— (*testator's wife*) during her life, and the income which accrued but was not actually received during her lifetime was duly paid to her personal representatives and all the income which has accrued since the death of the said —— (*testator's wife*) has been duly accounted for, as the Beneficiaries hereby acknowledge :

Application of income.

[(9A) *Recite statutory advertisement for claims, if issued :* T. Act, 1925, s. 27, *as amended* :]

[Advertisement for claims.]

(10) As appears from the Second Schedule hereto, the Trustees have raised and paid all the duties payable on the death of the said —— (*testator's wife*) and the costs of and incidental to the execution and winding up of the trust, including the costs of this Release and of the First and Second Assents hereinafter mentioned, leaving the investments and money mentioned in the Third Schedule hereto for distribution between the Beneficiaries :

Payment of duties and costs.

(11) In exercise of the statutory power of appropriation (as extended by the said Will) the Trustees, as such executors as aforesaid, have appropriated the real estate described in the First Assent hereinafter mentioned towards satisfaction of the share of the said A. B. as being of the value of £——, and have appropriated the real estate described in the Second Assent hereinafter mentioned towards satisfaction of the share of the said C. B. as being of the value of £—— :

Appropriation of real estate.

(12) By two Assents (herein respectively referred to as the First and Second Assents) bearing even date herewith, the First made between the Trustees of the one part, and the said A. B. of the other part, and the Second made between the Trustees of the one part, and the said C. B. of the other part,(v) the Trustees have assented to the said real estate vesting in the Beneficiaries respectively in accordance with the said appropriation :

Two assents for giving effect to an appropriation.

(v) See next Precedent and notes thereto.

Approval of accounts.(*w*)

(13) The accounts mentioned in the Second Schedule hereto have been carefully examined and approved by or on behalf of the Beneficiaries and they are satisfied therewith, as they hereby declare :

Transfers to the Beneficiaries.(*x*)

(14) On or before the execution hereof the Trustees have made the several payments and transfers mentioned in the Third Schedule hereto :

Agreement for release and indemnity.

(15) Upon such payments and transfers being made as aforesaid it was agreed that such release and covenants for indemnity should be given as are hereinafter contained :

NOW, in pursuance of the said agreement and in consideration of the Assents, payments, and transfers aforesaid, and of the premises, THIS DEED WITNESSETH as follows :—

Release by Beneficiaries to Trustees.

1. THE Beneficiaries do and each of them doth release and discharge the Trustees and each of them and the estates and effects of them and of each of them [and the respective estates and effects of every former trustee or executor of the said Will], from the real estate respectively described in the First and Second Assents and from the money and investments mentioned in the Third Schedule hereto and from all other (if any) the money or investments or other property received or which ought to have been received by the Trustees [or any former trustee or executor of the said Will] in respect of the estate of the Testator, and from all income thereof, and from all proceedings, costs, claims and demands in respect thereof, or in respect of any sale, investment, receipt, payment, breach of trust, act, deed, matter or thing whatsoever and wheresoever, whether hereinbefore or in the Schedules hereto mentioned or referred to or not, ever made, done, executed, omitted or neglected in the execution of the trusts of the recited Will, or otherwise howsoever in relation to the premises.

Covenant for indemnity by Beneficiaries to the Trustees.(*y*)

2. THE Beneficiaries hereby jointly and severally covenant with the Trustees that the Beneficiaries and each of them and their respective estates and effects will from time to time and at all times hereafter save harmless and keep indemnified the Trustees and each of them, and the estates and effects of them

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Breaches of trust.

(*w*) If there have been any breaches of trust, they should be stated and referred to as such, either in the Schedule or recitals.

Transfer of mortgage.

(*x*) For a form of transfer of mortgage to a beneficiary see next Precedent but one.

Trustees should not join in a covenant for indemnity.

(*y*) If a trustee is joining to give a release (see T. Act, 1925, s. 15), he should not join in the covenant for indemnity. The covenant operates as a joint covenant with the trustees "and with each of them" : L. P. Act, 1925, s. 81.

and each of them [and the respective estates and effects of every former trustee or executor of the said Will], from and against all proceedings, claims and demands, losses, costs, charges, damages and expenses which they or either of them, or the effects of them or either of them, may sustain, incur or pay by reason of any sale, investment, receipt, payment, breach of trust, act, deed, matter or thing whatsoever or wheresoever, whether hereinbefore or in the Schedules hereto mentioned or referred to or not, ever made, done, executed or omitted or neglected in the execution or purported execution of the trusts or powers of the recited Will of the Testator, or otherwise howsoever in relation to or affecting the premises.

Release and indemnity not to extend to property which may hereafter become subject to the trust.(z)

3. PROVIDED that the foregoing release and indemnity shall not extend to any property which may at any time hereafter become subject to the trusts of the said Will.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Short particulars of real and personal estate belonging to the testator at his death.

SECOND SCHEDULE.

Capital (*Debtor and Creditor*) Account (*up to date showing the payment of duties on the deaths of the testator and widow, and of the costs of this release, sales and changes of investments*).

THIRD SCHEDULE.

Investments and money recently transferred to the Beneficiaries.

First Part.

Property transferred to the said A. B.

Second Part.

Property transferred to the said C. B.

(z) For instance, property might be made to devolve as part of the testator's estate by a Will of another person as if he had survived the second testator: *cf.* Wills Act, 1837, s. 33.

No. IV.

ABSOLUTE ASSENT *to the vesting of* REAL ESTATE *in a* RESIDUARY LEGATEE *of a share of the proceeds of sale pursuant to an* APPROPRIATION *and in part* SATISFACTION *of the share or to a person who has otherwise become absolutely entitled.*(*a*) (*Legal Estate.*)

Parties. THIS ASSENT is made, &c., BETWEEN E. F., of, &c., and G. H., of, &c. (hereinafter called the Executors), of the one part and A. B., of, &c. (hereinafter called the Estate Owner), of the other part: WHEREAS:—

Probate. (1) X. Y. (hereinafter called the Testator) being at his death seised of the freehold properties hereinafter described [free from incumbrances (*b*)] died on the (*date*) having by his Will dated, &c., appointed the Executors to be his executors who on the (*date*) duly proved the same at the —— Probate Registry:

Agreement to assent. (2) The Executors being satisfied that the Estate Owner has become absolutely and beneficially entitled to the said properties and has not dealt with his interest therein have at his request agreed to execute such assent as is hereinafter contained:

Absolute assent. NOW, the Executors, As the Personal Representatives of the Testator, hereby assent to the vesting of:

ALL, &c. (*parcels by reference to Schedule*) in the Estate Owner in fee simple.

AS WITNESS, &c. (*Add Schedule.*)

Appropriations affect equitable interests. Assent to a purchaser from a beneficiary. Transfers of stock to beneficiaries. Forms of assents. Notice. Stamp.

(*a*) The fact that an appropriation has been made must not be recited, that affects the equitable interest. It is immaterial how the beneficial title of the estate owner arose, he may have been a purchaser from a beneficiary, all that is essential is that the executors or administrators should be satisfied that his claim to be clothed with the legal estate is a good one; it follows that absolute assents to the vesting of real estate (not of mortgage estates, see next Prec.) will, in nearly all cases, be in the same form: Ad. of E. Act, 1925, s. 36. The principle is the same as that governing transfers of stock to persons who become entitled thereto, the equitable interest or the right to call for the stock, whether in a beneficial or fiduciary capacity, is not disclosed, but where the land ought to be held on trust for sale the assent will declare a trust for sale, while if the land ought to be held as settled land the assent will take the form of a vesting assent and nominate S. L. Act trustees. Notice of the assent must be endorsed on the probate or letters of administration; no stamp duty is payable.

Assents subject to legal estates. Over-reachable equitable interests.

(*b*) Assents may be properly made subject to any legal estate (including charges by way of legal mortgage), but should not be made subject to over-reachable equitable interests or powers. In such cases, even though the estate owner may have a right under L. P. (Amend.) Act, 1926, s. 1, to convey his legal estate (*e.g.*, for mortgage purposes) subject to the equitable interest, the assent should either take the form of a vesting assent or a special trust for sale so that he may retain his option of conveying free therefrom.

No. V.

TRANSFER *of a* MORTGAGE *by* PERSONAL REPRESENTATIVES *to a person who has become* ENTITLED *thereto, whether* BENEFICIALLY *or in a* FIDUCIARY CAPACITY.(c) (*Legal Estate.*)

Parties.

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Transferors), of the one part and A. B., of, &c. [and C. D., of, &c.] (hereinafter called the Present Mortgagee[s]), of the other part: WHEREAS:—

Mortgage before 1926.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between R. S. of the one part and X. Y. (hereinafter called the Original Mortgagee) of the other part, whereby certain freehold properties at —— were conveyed to the Original Mortgagee in fee simple by way of mortgage for securing payment to him of the principal sum of £—— and interest thereon as therein mentioned; And by virtue of the Law of Property Act, 1925, the said properties became vested in the Original Mortgagee for a term of 3,000 years without impeachment of waste subject to cesser on redemption under the Principal Deed:

[Mortgage after 1925.]

[*or where the Mortgage is made after* 1925—

(1) This Deed is supplemental to a Legal Charge (hereinafter called the Principal Deed) dated, &c., and made (*as above*), whereby certain freehold properties at —— were charged by way of legal mortgage with the payment to the Original Mortgagee of the principal sum of £—— and interest thereon as therein mentioned:]

Assent not applicable to a mortgage debt.

(c) An assent is not applicable to a transfer of a mortgage debt. Assents are the modes of assurance by personal representatives of "any estate or interest in real estate": Ad. of E. Act, 1925, s. 36 (1), which thus includes leaseholds as well as freeholds.

Transfers of mortgages.

For forms of transfers of mortgages generally, see Vol. II, pp. 277–308, 331–34; also Settlements (Personal), p. 110, *supra*; L. P. Act, 1925, ss. 114, 118; 3rd Sch., Form No. 1; 4th Sch., Forms Nos. 2–4.

Security in the land cannot be taken in undivided shares.

Provisions affecting mortgages made before 1926.

The mortgage term or legal charge cannot be taken in undivided shares, nor to more than four persons as joint tenants: *ib.*, s. 34 (2). As to the provisions affecting mortgages made before 1926: *ib.*, 1st Sch., Pt. II, paras. 6 (*a*); 7 (*a*) (*b*) (*h*); Pts. VII and VIII; as to mortgages formerly vested in infants: *ib.*, 1st Sch., Pt. III, paras. 3 and 4. Mortgage terms are not subjected to a trust for sale, though held by joint tenants, until the right of redemption is barred.

Notice of transfer must be given to mortgagor.

Priority notices.

Even where a land charge is registered (*e.g.*, for want of the title deeds) notice of the transfer must be given to the mortgagor and subsequent incumbrancers: *ib.*, ss. 94 (2) (as amended), 97. See also as to priority notices: L. P. (Amend.) Act, 1926, s. 4, under which official certificates of search may become documents of title.

Death, &c., of Original Mortgagee.

(2) The Original Mortgagee died on the (*date*) [intestate] having by his Will dated, &c., appointed the Transferors to be his executors who on the (*date*) duly proved the said Will at the —— Probate Registry [*or* and on the (*date*) Letters of Administration to his estate and effects were duly granted to the Transferors by the —— Probate Registry]:

State of mortgage debt, and title of present Mortgagee[s].

(3) The said principal sum of £—— still remains owing on the security of the Principal Deed with the current interest thereon and now belongs to the Present Mortgagee[s on a joint account]:

Transfer of mortgage.

NOW, in consideration of the premises, THIS DEED WITNESSETH that the Transferors, As the Personal Representatives of the Original Mortgagee, hereby convey and transfer to the Present Mortgagee[s] the benefit of the Principal Deed.

IN WITNESS, &c.(*d*)

No. VI.

RELEASE *by* RESIDUARY LEGATEES *to* TRUSTEES *of a* WILL *giving mixed Residue on* TRUST *for* SALE *where the* SHARE *of a* DAUGHTER *is settled and* RETAINED. (*Equitable Interests.*)

Parties.

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (*one residuary legatee*), of the 1st part, C. B., of, &c. (*another residuary legatee*), of the 2nd part, Mary B., of, &c., Spinster (*beneficiary of a settled share in residue*), of the 3rd part, and C. T., of, &c., and C. C. T., of, &c. (hereinafter called the Trustees (*e*)), of the 4th part: WHEREAS:—

Will disposing of mixed residue and

(1) X. B. (deceased) (hereinafter called the Testator) duly

Stamp.

(*d*) The stamp will be 6*d.* per £100; though if *ad valorem* duty has already been paid (*e.g.*, on an appropriation deed made with the consent of the persons interested and not at the discretion of the personal representatives, see *Re Lepine* [1892], 1 Ch. 210; 61 L. J. Ch. 153), the transfer may, if the debt exceeds £2,000, be stamped 10*s.* (the duty already having been paid), but must be adjudicated. The exemption from *ad valorem* duty only applies where a trustee is appointed or discharged and the transfer is consequential thereon.

Trusts of mortgage debt.

A purchaser, &c., is not concerned with the trusts (if any) affecting a mortgage debt: L. P. Act, 1925, s. 113.

Handing over deeds on discharge of a mortgage.

As to handing over deeds on the discharge of a mortgage, see L. P. Act, 1925, s. 96 (2), as amended by L. P. (Amend.) Act, 1926, Sch.

Power to partition.

Assents can only be made by personal representatives.

(*e*) If there have been changes of trustees, see Prec. I, p. 534. In this case there would have been an assent in favour of the trustees on trust for sale in regard to any real estate and chattels real remaining unsold, and in order to distribute them between the children, the power to partition conferred by L. P. Act, 1925, s. 28, would have to be exercised. An assent cannot be made by trustees as such, but only by executors or administrators, hence an assent in favour of trustees for sale will be postponed as long as practicable.

settlement of daughter's share.

made his Will dated, &c., and thereby, after appointing the Trustees to be his executors and trustees and after bequeathing certain legacies, devised and bequeathed to them all his real estate and the residue of his personal estate UPON TRUST to sell his real estate (including chattels real) and to sell, call in and convert into money such part of his personal estate as should not consist of money (with power to postpone sale), And out of the money arising thereby and out of his ready money to pay his funeral and testamentary expenses, debts and legacies and to invest the residue of the said money in any of the investments thereby authorised (with power to vary investments), And to stand possessed of the investments directed to be made or authorised to be retained, and the investments for the time being representing the same, UPON TRUST to pay the income thereof to his widow, Jane B., during the residue of her life [her widowhood], And after her death [or remarriage] the Testator directed his Trustees to hold the capital and income of his residuary estate IN TRUST for all or any his children or child who should attain the age of twenty-one years, or, being daughters, should marry under that age, and if more than one, in equal shares, but the Testator directed that the share of every daughter of his should be retained upon the trusts therein declared for the benefit of herself, her husband and issue, And the Trustees were thereby authorised to value and apportion the residuary estate for the purposes of dividing the same among the persons entitled thereto, and it was declared that every such valuation and apportionment should be absolutely binding upon all persons interested under the said Will [*or*, And the Testator authorised the statutory power of appropriation to be exercised at the discretion of his trustees without obtaining any of the consents mentioned in section forty-one of the Administration of Estates Act, 1925]:

Death and probate.

(2) The Testator died, &c., without having revoked or altered his said Will, which was on the (*date*) duly proved at the —— Probate Registry by the Trustees:

Children.

(3) The Testator had three children and no more (namely), two sons, the said A. B. and C. B., and one daughter, the said Mary B., all of whom have attained the age of twenty-one years:

State of testator's estate at his death.

(4) The First Schedule hereto contains particulars of the real and personal estate belonging to the Testator at his death:

Realisation of estate, payment of

(5) As appears from the Second Schedule hereto, the Trustees sold all the real estate of the Testator and converted so much of his personal estate (except the leasehold properties comprised

debts, &c., and investment of residue.

in the First and Second Assents hereinafter mentioned) as did not consist of ready money or of authorised investments and paid his funeral and testamentary expenses and debts and the death duties payable on his death, and invested the residue of the proceeds of such sales and conversion and of his ready money in manner directed by the said Will, and particulars of such sales, conversion, payments and investments and of certain changes made from time to time in such investments are contained in the Second Schedule hereto :

(6), (7) and (8) (*Death of widow, application of income, and payment of duties, &c.) as in recitals* (8), (9) *and* (10) *of Prec.* III, *supra*, but *referring to leaseholds instead of real estate.*)

No assent as to leaseholds.

(9) No assent on trust for sale of the said leaseholds has ever been made in favour of the Trustees but they have retained them as such executors as aforesaid :

[(9A) *Recite advertisement for claims if given.*]

Appropriation of leaseholds in favour of the two sons.

(10) (*As in recital* (11) *of Prec.* III, *supra, only refer to leaseholds.*)

(11) (*Recite the two Assents as in* (12) *of Prec.* III, *referring to leaseholds.*)

Apportionment and transfer of residue.(*f*)

(12) The Trustees have valued and apportioned the residuary estate with the approval of the other parties hereto in manner appearing in the Third Schedule hereto, and have paid and transferred the cash and investments respectively mentioned in the first and second parts of that Schedule to the said A. B. and C. B. respectively, taking into account the values of the leasehold properties respectively comprised in the first and second Assents, and have appropriated and retained the investments mentioned in the third part of that Schedule in respect of the settled share of the said Mary B. :

Approval of accounts.

(13) (*Approval of accounts as in Prec.* III) :

Agreement for release and indemnity.

(14) It was agreed that upon such payments, assents, transfers and appropriation being made such release and indemnity should be given to the Trustees (except so far as regards the investments mentioned in the third part of the Third Schedule hereto) by the other parties hereto in manner hereinafter appearing :

(*f*) It is assumed that the cash balance and investments are transferred to the beneficiaries absolutely entitled and certain investments retained in respect of the settled share. If any leaseholds had been appropriated in respect of the settled share the assent would be to the trustees on trust for sale in the form of the next precedent.

NOW, in consideration of the premises, THIS DEED WITNESSETH as follows :—

Release and covenant for indemnity.

1 and 2. (*Adapt the first two operative clauses of Prec.* III, *pp.* 548–49. *See that son's covenants extend to the liabilities in regard to the leaseholds unless the trustees are content with the indemnity provided by T. Act,* 1925, *s.* 26. *The form of each assent will be similar to that in Prec.* IV, *save that the residue of the terms will be referred to instead of the fee simple, and see next Precedent.*)

Exception of settled share.

3. PROVIDED that the release and indemnity hereinbefore contained shall not extend to the investments mentioned in the third part of the Third Schedule hereto appropriated and held In trust for the benefit of the said Mary B., her husband and issue as aforesaid, nor to any other property which may hereafter become subject to the trusts of the said Will.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of the real and personal estate belonging to the Testator at his death.

First Part.

Real estate and chattels real.

Second Part.

Personal estate.

THE SECOND SCHEDULE.

Particulars of dealings with the residuary estate.

(*This will contain a Debtor and Creditor Account and show ultimately the present state of the residuary estate, including the payment of costs and duties up to date.*)

THE THIRD SCHEDULE.

Particulars of the distribution or appropriation of the residuary estate.

First Part.

Cash and investments transferred to the said A. B.

Second Part.

Cash and investments transferred to the said C. B.

Third Part.

Investments appropriated and retained in respect of the share of the said Mary B.

No. VII.

ASSENT *to* TRUSTEES *on* TRUST *for* SALE *of* LEASEHOLDS *appropriated in respect of the settled share of a child of the* TESTATOR.(*g*) (*Legal Estate.*)

THIS ASSENT is made this (*date*) By E. F., of, &c., and G. H., of, &c. (hereinafter called the Executors): WHEREAS :—

Probate, &c.

(1) X. Y. (hereinafter called the Testator), being at his death entitled to the properties comprised in the Leases mentioned in the Schedule hereto for the residue of the terms thereby granted, died on the (*date*) having by his Will dated, &c., appointed the Executors to be his executors, who on the (*date*) duly proved the same at the —— Probate Registry :

Leaseholds affected by a trust for sale.

(2) The said leasehold properties are now liable to be held by the Executors on the trusts hereinafter mentioned, and accordingly they have determined to execute such assent as is hereinafter contained :

NOW THIS ASSENT WITNESSETH as follows :—

Assent on trust for sale of leaseholds.

1. THE Executors, As the Personal Representatives of the Testator, hereby assent to the vesting in themselves of :

Parcels.

ALL the premises respectively comprised in the Leases mentioned in the Schedule hereto for the residue of the terms thereby granted at the rents and subject to the lessees' covenants and conditions therein contained But upon the trusts hereinafter mentioned.

Trust for sale.

2. THE Executors or other the trustees or trustee for the time being hereof (hereinafter called the Trustees) shall hold the premises UPON TRUST to sell the same, with power to postpone the sale of the whole or any part thereof, and shall stand

Trusts of proceeds of sale.

possessed of the net proceeds of sale and any capital money arising under the statutory powers [as hereby extended] and

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(*g*) See notes to Prec. IV, *supra*. The fact of appropriation should not be recited. As to conveyances, &c., by a person to himself: L. P. Act, 1925, s. 72. If new or additional trustees are to be appointed as respects the settled share this should be done before the assent is executed, it will then be made in favour of the persons who become trustees of the share: T. Act, 1925, s. 37 (1) (b).

New trustees of a share.

Stamp.

The effect of the assent is to convert the executors into trustees for sale.

Notice.

No stamp duty is payable. Notice of the assent must be endorsed on the probate.

the net rents and profits until sale Upon the trusts respectively declared by the said Will concerning the capital and income of the share of —— (*name of the child entitled to the settled share*) in the residuary estate of the Testator.

[Additional powers.]

[3. In addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, the following powers are exercisable by the Trustees in relation to the premises, namely—

(1) Power, &c. (*Set out any additional powers conferred by the Will so far as they relate to the land and concern a purchaser, mortgagee or lessee.*)]

New trustees.

4. The statutory power to appoint new trustees applies to this Assent [*or if the child or any other person has power to appoint trustees by virtue of the Will, say,* "The —— (*name of donee of power*) has power during [his] [her] lifetime to appoint new trustees of this Assent."]

As witness, &c.

The Schedule.

Date of Lease.	Parties to Lease.	Property demised.	Term.	Yearly rent.

No. VIII.

RELEASE *by the* Statutory Next-of-Kin *to* Administrators *on the* Distribution *of the* Real *and* Personal Estate *of an* Intestate.(h) (*Equitable Interests.*)

Parties.

THIS RELEASE is made, &c., Between A. B., of, &c., C. B.,

Devolution on intestacy after 1925.

(*h*) The whole of the property real and personal vests in the administrators when appointed: Ad. of E. Act, 1925, Pt. I. Till the grant is made it vests in the President of the Probate Division: *ib.*, s. 9. For purposes of administration it is held on trust for sale: *ib.*, s. 33. As to giving possession to the beneficiaries: *ib.*, s. 43. Distribution can be postponed for a year: *ib.*, s. 44; if a life interest arises this may involve a further postponement. The rights of the surviving spouse and the issue, &c., of the intestate are governed by *ib.*, ss. 46 and 47. The life interest of the spouse can be redeemed by the administrators under *ib.*, s. 48, with a view to winding up the whole estate. The money required for that purpose, and for paying the £1,000 to the spouse can be raised: *ib.*, s. 48.

Redemption of life interest.

Number of administrators.

As to the number of administrators and the appointment of an additional representative: Jud. Act, 1925, s. 160; where there is a life interest the grant will not be made to less than two individuals; as to who will be appointed: *ib.*, s. 162, and see Non-Contentious Probate Rules, 1925, and official instructions.

of, &c., and D. B., of, &c. (*children of intestate*) (hereinafter collectively referred to as the Children), of the one part, and E. B., of, &c. (*widow of intestate*) and the said A. B. (hereinafter together called the Administrators) of the other part: WHEREAS:—

Death of intestate leaving a widow and children.

(1) X. B. (hereinafter called the Intestate) late of, &c., died intestate on (*date*) leaving the said E. B. his widow (hereinafter called the Widow) and the Children his only children, all of whom have attained the age of twenty-one years:

Administration granted to widow and child.

(2) Letters of Administration to the estate and effects of the Intestate were on the (*date*) granted to the Administrators by the —— Probate Registry:

Payment of debts; particulars of residuary estate in First Schedule.

(3) The debts and funeral and administration expenses of the Intestate and the death duties payable on his death in respect of his estate have been paid by the Administrators, who have also delivered to the Widow the "personal chattels" belonging to the Intestate and paid to her the net sum of £1,000 (as she hereby admits), leaving as the residuary estate of the Intestate the real and personal property mentioned in the First Schedule hereto:

[(3A) *Recite advertisement for claims, if given*:]

Division into moieties and retainer of first moiety to answer life interest.

(4) In exercise of the statutory power of appropriation and with the requisite consents the Administrators have valued or caused to be valued each of the items (except cash in hand) representing the residuary estate of the Intestate and have allotted the property mentioned in the Second Schedule hereto (hereinafter called the first moiety), representing in value one-half of the said estate, which moiety or the proceeds of sale thereof and the investments for the time being representing the same (including the sinking fund policy effected by the Administrators in relation to the leasehold property mentioned in that Schedule and to be maintained out of income) shall be retained by the Administrators to answer by means of the income thereof the life interest of the Widow under the said intestacy in exoneration of the second moiety hereinafter mentioned:

Distribution of the second moiety.

(5) In further exercise of the said power and with the requisite consents the Administrators have appropriated the remaining part of the residuary estate (hereinafter referred to as the second moiety) between the Children in the manner appearing in the Third Schedule hereto:

Disposition to children.

(6) The Administrators have executed all requisite assents, transfers of mortgage and other assurances and made all requisite

payments for vesting in each of the Children the property allotted to him [or her] in respect of the second moiety, save that a small sum of cash has been retained out of each allotment to discharge the costs incidental to this release and the winding up of the trusts affecting the second moiety :

Rendering accounts.

(7) A capital account has been rendered by the Administrators relating to the matters aforesaid which has been signed as approved by or on behalf of each of the parties hereto, and as appears from that account the said costs have been paid (the first and second moieties bearing the costs hereof equally) and the balance of the cash so retained as aforesaid has been paid to the parties hereto :

Income.

(8) All income received by the Administrators in respect of the said estate has been duly accounted for to the persons interested therein :

Agreement for release.

(9) Upon such partial distribution being effected as aforesaid it was agreed that such release and covenants for indemnity should be given as are hereinafter contained :

NOW, in consideration of the premises, THIS DEED WITNESSETH as follows :—

Release and covenant for indemnity.

1 and 2. (*Adapt the two first clauses in Prec.* III *of this Group, pp.* 548–49.)

Saving.

3. Provided that nothing in the foregoing release and indemnity shall—

(1) Free the Administrators or other the trustees for the time being of the first moiety from holding the same or the proceeds of sale thereof Upon trust for the Widow during her life and after her death for the Children according to their respective shares therein :

(2) Free the Administrators, when so required, from the obligation to execute assents on trust for sale of any real estate and chattels real comprised in the first moiety :

(3) Affect the trust for sale imposed by statute in relation thereto,(*i*) or the power to effect a further appropriation after the cesser of the life interest of the Widow.

In witness, &c.

Trust for sale; effect of appropriation.

(*i*) See Ad. of E. Act, 1925, s. 33. The exercise of the power of appropriation does not put an end to the trust for sale, unless the property is made over absolutely to a beneficiary : *ib.*, s. 41 (6).

Assents by administrators.

For a form of assent by administrators on trust for sale, see next Precedent. Also Precedents IV and VII, *supra*, which can be adapted for use by administrators.

Transfer of mortgage by administrators.

For a transfer of a mortgage by administrators, see Prec. V, *supra*.

THE FIRST SCHEDULE.

Particulars of the residuary estate of the Intestate.

1. Freehold Farm, known as ——, in the County of ——, containing a.— r.— p.— or thereabouts, in the occupation of the said A. B.
2. A Leasehold House, being No. 2, —— Street, ——, in the County of Middlesex, held for the residue of a term of sixty years, from the —— day of ——, at the yearly rent of £——, in the occupation of the Widow.
3. The following perpetual yearly rentcharges :—

Yearly rentcharge.	Property charged.	Date of Grant.	Parties to Grant.

4. The following investments :—

(*a*) (*Set out particulars.*)

5. £—— secured by Mortgage dated, &c., on freehold property at ——.
6. £—— cash.

THE SECOND SCHEDULE.

Particulars of the property appropriated to answer the first moiety, in regard to which the widow is to take a life interest.

(*Set out these particulars, e.g., including the leasehold house and a sinking fund policy.*)

THE THIRD SCHEDULE.

Particulars of the distribution of the second moiety among the children of the Intestate.

First Part.

Particulars of the property appropriated in satisfaction of the third share of the said A. B. in the second moiety.

(*Set out the particulars including, e.g., the Freehold Farm.*)

Second Part.

Particulars of the property appropriated in satisfaction of the third share of the said C. B. in the second moiety.

(*Set out these particulars.*)

Third Part.

Particulars of the property appropriated in satisfaction of the third share of the said D. B. in the second moiety.

(*Set out these particulars.*)

No. IX.

ASSENT *by* ADMINISTRATORS *to the vesting of* PERPETUAL RENTCHARGES *and* LEASEHOLDS *in Trustees on* TRUST *for* SALE.(*j*) (*Legal Estate.*)

THIS ASSENT is made, &c., BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Administrators), of the one part, and A. T., of, &c., and B. T., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:— Parties.

(1) X. Y. (hereinafter called the Intestate), being at his death entitled to the perpetual rentcharges and leasehold properties mentioned in the First and Second Schedules hereto, died on the (*date*) intestate, and on the (*date*) Letters of Administration to his estate and effects were granted to the Administrators by the —— Probate Registry: Death of intestate, &c.

(2) The Administrators being satisfied that the Trustees are entitled to call for the said rentcharges and properties to be vested in them on the trusts hereinafter mentioned have agreed to execute such assent as is hereinafter contained: Title of the trustees.

NOW THIS ASSENT WITNESSETH as follows:—

1. THE Administrators, As the Personal Representatives of the Intestate, hereby assent to the vesting in the Trustees of— Assent on trust for sale.

FIRST, ALL AND SINGULAR, the perpetual rentcharges mentioned in the First Schedule hereto with the benefit of the covenants and remedies contained in the Deeds of Grant therein mentioned: Perpetual rents.

AND SECONDLY, ALL the premises respectively comprised in the Leases mentioned in the Second Schedule hereto: Leaseholds.

AS to the said rentcharges in fee simple and as to the said leasehold properties for the residue of the respective terms for which the same are held; And as to all the premises on the trusts hereinafter mentioned.

(*j*) The trustees may have become entitled under a conveyance by a beneficiary, or new trustees may have been appointed in place of the administrators. It would not generally be expedient for administrators to assent to land vesting in themselves on trust for sale. If the trust for sale has been made exercisable with the consent of any person, the trust in the assent should be made to correspond.

Trust for sale.

Trusts of proceeds.

2. THE Trustees shall hold the premises UPON TRUST to sell the same with power to postpone the sale of the whole or any part thereof, and shall stand possessed of the net proceeds of sale and any capital money arising under the statutory powers [as hereby extended] and the net rents and profits until sale, Upon the trusts upon which the same ought to be held as forming part of the residuary estate of the Intestate remaining undistributed or the income thereof or otherwise from time to time affecting the premises:

[*or* UPON the trusts upon which the same ought to be held under a Conveyance dated, &c., and made, &c. [*or* under the Will dated, &c., and proved on —— of R. X., who died on ——], or upon such other trusts as the same ought to be held from time to time:]

[Additional powers.]

[3. IN addition to the powers conferred by section twenty-eight of the Law of Property Act, 1925, the following powers are exercisable by the Trustees in relation to the premises namely—

(1) Power, &c. (*Set out any additional powers conferred by the Conveyance on trust for sale or the Will disposing of the equitable interests so far as they relate to the property and concern a purchaser, mortgagee or lessee. There will be no additional powers if the property remains part of the estate of the Intestate*).**]**

New trustees.

4. THE statutory power to appoint new trustees applies to this Assent [*or if the instrument, if any, creating the trust for sale gives an express power, say*: "The —— (*donee*) has power during [his] [her] lifetime to appoint new trustees of this Assent"].

AS WITNESS, &c.(*k*) (*Add two Schedules.*)

No. X.

RECEIPT *by a* WIDOW *for the* MONEY *paid by the* ADMINISTRATORS *of her* HUSBAND'S ESTATE *on the* REDEMPTION *of her* LIFE INTEREST *in a* MOIETY *thereof to enable the* ESTATE *to be distributed among her* CHILDREN.(*l*) (*Equitable Interest.*)

In the matter of the estate of A. B. deceased.

Stamp.

Notice.

(*k*) No stamp duty is payable. Notice of the assent must be endorsed on the letters of administration. As to assents generally, see notes to Prec. IV, *supra*.

Indemnity in regard to leaseholds.

No covenant for indemnity should be given in the assent in regard to the liabilities under the leases, such a covenant will not usually be required: T. Act, 1925, s. 26; if it is wanted it should be given separately.

Power to redeem.

(*l*) See Ad. of E. Act, 1925, s. 48. Where, after delivering the "personal chattels" (*ib.*, s. 55 (1) (x)) and paying the net £1,000, the estate left is small,

Redemption of Widow's life interest.

(*Date*) I, Jane B., of, &c., the widow of the above-named Intestate, hereby acknowledge that I have this day received from —— (*names of the Administrators*), his Administrators, the sum of £——, payable for the redemption of the said life interest. (*To be signed over a receipt stamp.*) Receipt.

No. XI.

APPROPRIATION DEED *by* PERSONAL REPRESENTATIVES *allotting* INVESTMENTS *in satisfaction of an* ANNUITY *and a reversionary* FAMILY CHARGE *affecting settled land which has become vested in an* ABSOLUTE OWNER; *and to* RECTIFY PAST TITLES.(*m*) (*Legal Estate.*)

THIS DEED OF APPROPRIATION is made, &c., BETWEEN P. R., of, &c., and P. R. R., of, &c. (hereinafter called the Personal Representatives), of the 1st part, Jane A., of, &c. (hereinafter called the Annuitant), of the 2nd part, L. A., of, &c. (hereinafter called the Legatee), of the 3rd part, and T. L., of, &c. (hereinafter called the Estate Owner), of the 4th part: WHEREAS:— Parties.

(1) (*Recite the Will of X. Y.* (hereinafter called the Testator) *appointing E. A. and E. A. A. executors, bequeathing an annuity to* "the Annuitant," *and after her death a legacy of £—— to such of her children by John A., as should attain twenty-one, charge of the annuity and legacy on the real and personal estate. Devise* Will creating family charge.

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it will not be worth while if the capital has become absolutely vested in the children, subject, as regards half of the estate, to the life interest, to hold that half in trust during the residue of the life of the surviving spouse. Property can be appropriated in or towards satisfaction of the redemption money: *ib.*, ss. 41 and 48 (2) (b). Appropriation of property.

If the life interest has been assigned to a purchaser, a release may be required when the money is paid.

(*m*) As a general rule no deed of appropriation is required, evidence of the appropriation will generally be shown by recitals in a release, and letters of consent will be kept if the consenting parties do not join in the release. But in the case in the text, though the interests provided for are equitable interests, the estate owner will require the deed, or a duplicate of it, to show that he can make title free from the charges without a vesting deed and independently of the S. L. Act, or a special trust for sale. It will also be material to the purchasers who have taken subject to the family charges. If arrangements can be made to file the deed at the Central Office, this will be deemed expedient. Appropriation deeds generally unnecessary.

The appropriation is made under Ad. of E. Act, 1925, s. 41, which applies (sub-s. 9) whenever the testator dies. For the meaning of "personal representatives": *ib.*, s. 58 (1) (xi). They can act on behalf of the lunatic or defective where no receiver has been appointed: *ib.*, s. 41 (1) (iv). Statutory power of appropriation. Lunatics.

and bequest of the real estate and the residuary personalty to the Estate Owner. No trust for or power of sale, nor appointment of S. L. Act trustees):

Death and probate.

(2) (*Recite death of Testator before* 1898, *and probate by E. A. and E. A. A., who retain part of the personal estate but have no express power to appropriate it to answer the annuity and legacy*) :

Death of one executor.

(3) (*Recite death of E. A.*) :

Will of second executor, &c.

(4) (*Recite Will of E. A. A. appointing* "the Personal Representatives" *to be his executors; his death and probate by them*) :

Sales subject to family charges.

(5) (*Recite sales by Estate Owner of part of real estate, subject to but with indemnity against, the family charges*) :

Death of annuitant's husband.

(6) (*Recite death of John A leaving the Annuitant, and having had two children* "the Legatee," *and Mary A., a lunatic for whom no Receiver or Committee has been appointed, both children having attained twenty-one*) :

Request to appropriate.

(7) (*Recite request by the Estate Owner that the Personal Representatives should appropriate part of residuary personal estate to answer the annuity and legacy*) :

Agreement to concur.

(8) (*Recite agreement by Annuitant and Legatee to join*) :

NOW, in exercise of the power for this purpose conferred by section forty-one of the Administration of Estates Act, 1925, and of all other powers, THIS DEED WITNESSETH as follows :—

Appropriation.

1. THE Personal Representatives with the consent of the Annuitant and of the Legatee, hereby appropriate the investments mentioned in the Schedule hereto (being part of the residuary personal estate of the Testator), to answer by means of the income thereof the said annuity in manner hereinafter mentioned, and as regards the capital and income after the cesser of the said annuity in satisfaction of the said reversionary legacy in exoneration of all other property charged with the payment of the said annuity and reversionary legacy including the properties so sold by the Estate Owner as aforesaid.

Trusts for giving effect to the appropriation.

2. FOR giving effect to the said appropriation the Personal Representatives shall stand possessed of the said investments, and the investments from time to time representing the same (hereinafter called the Appropriated Fund), Upon the following trusts, namely—

Trust to pay annuity.

(1) UPON TRUST out of the income thereof to pay the said annuity and all arrears (if any) thereof, and to pay the surplus income accruing during the subsistence of the said annuity,

and not required to answer the same to the Estate Owner or the persons deriving title under him :

Trust for legatees.

(2) Subject to the trusts aforesaid the Appropriated Fund and the income thereof shall after the death of the Annuitant [or the earlier cesser of the said annuity] be held IN TRUST for the Legatee, and the said Mary A., in equal shares, or the persons respectively deriving title under them in satisfaction of all claims in respect of the said reversionary legacy :

Changes of investment.

(3) During the subsistence of the said annuity all changes of the investments representing the Appropriated Fund shall be made with the consent of the Annuitant.

New trustees.

3. DURING the subsistence of the said annuity the Annuitant shall have power to appoint new trustees hereof.

IN WITNESS, &c.(n) (*Add Schedule of investments.*)

Other modes of making title.

(n) The representatives become the S. L. Act trustees of the Will: S. L. Act, 1925, s. 30 (3), and could execute a vesting deed : *ib.*, 2nd Sch., para. 1. Had the land been vested in them they could have executed a vesting assent : *ib.*, 2nd Sch., para. 2. These methods would have enabled the estate owner to make a title, in future, free from the family charges without an appropriation, but would not have cleared the titles which had been made subject thereto. He could have continued to make titles subject to the family charges under L. P. (Amend.) Act, 1926, s. 1, and would, apart from an appropriation, have done so where money had to be raised for his own purposes. It would also have been open to him to have created a special trust for sale : L. P. Act, 1925, s. 2 (2), as amended.

Searches on the winding up of an estate or trust.

It is recognised in T. Act, 1925, s. 27 (2) (b), that trustees and personal representatives, when conveying a legal estate in land (by an assent or otherwise) to a person interested on the winding up of the trust or estate, may have to obtain official certificates of search corresponding to those which a purchaser would require : L. P. Act, 1925, ss. 197, 198. In practice, these searches against the back title will seldom be required, for the trustees or representatives will generally know the material facts ; but they must satisfy themselves that they are vesting the legal estate in the proper person.

DIVISION IV.

SEPARATION DEEDS.

PRELIMINARY NOTE.

Validity of separation contracts.

AN executory contract for separation is binding on the parties, and will be specifically enforced by the court if founded on good and valuable consideration: Vaizey, 1447; Lush, 3rd ed., 455, 480; but even then the deed would not be enforced if it were contrary to public policy according to English law: *ib.*, 456; and see *Harrison* v. *H.* (No. 1) [1910], 1 K. B. 35; 79 L. J. K. B. 133. But an agreement for or conditional on future separation is void: *Cocksedge* v. *C.*, 5 Hare, 397; *Brodie* v. *B.* [1917], P. 271, unless contained in a reconciliation agreement; see *Harrison* v. *H.*, *supra*, and *Re Meyrick* [1921], 1 Ch. 311.

Separation agreement may be pleaded as a bar to action for restitution of conjugal rights.

An agreement by husband and wife to live separately is not illegal as contrary to public policy, it should be made in contemplation of immediate separation, and if acted on may be pleaded by way of defence to a suit for the restitution of conjugal rights or for a judicial separation: *Hunt* v. *H.* (1861), 4 D. F. & J. 221; 31 L. J. Ch. 161; *Marshall* v. *M.* (1879), 5 P. D. 19; 48 L. J. P. 49; *Besant* v. *Wood* (1879), 12 Ch. D. 605; 48 L. J. Ch. 497; *Welch* v. *W.* [1916], 85 L. J. P. 188; *Roe* v. *R.* [1916], P. 163, and see *Kennedy* v. *K.* [1907], P. 49; 76 L. J. P. 34, and cases there cited, but is no defence where the husband has become bankrupt and is unable to pay an annuity to the wife, which he had covenanted to pay: *McQuiban* v. *M.* [1913], P. 208; nor where the deed has been repudiated: *cf. Looker* v. *L.* [1918], P. 132. Restitution may be ordered if the other side does not set up the deed: *Williams* v. *W.* [1921], P. 131, if the court is satisfied as to the sincerity of the applicant: *Harnett* v. *H.* [1924], P. 126.

Compromise of a matrimonial suit, or of threatened proceedings, a sufficient consideration.

The compromise of matrimonial proceedings, or the abandonment of threatened proceedings where circumstances exist which would be a ground for such proceedings, is a sufficient consideration for a separation agreement and for any stipulations as to money or property which either party may, as part of the same arrangement, make in favour of the other: *McGregor* v. *M.* (1888), 21 Q. B. D. 424; 57 L. J. Ch. 591; *Cahill* v. *C.* (1883), 8 A. C. 420; *Hulse* v. *H.* (1910), 103 L. T. 804.

Covenant by wife if she has separate property a sufficient consideration for covenant by husband.

A covenant by a trustee, or (since the M. W. P. Act, 1893) by the wife herself, to indemnify the husband against her debts is a sufficient consideration for a covenant by the husband to make her an allowance, or to give her any other benefit: *Stephens* v. *Olive* (1786), 2 Bro. C. C. 90; *Worrall* v. *Jacob* (1817), 3 Mer. 256; *Walrond* v. *W.* (1858), Johns 18; 28 L. J. Ch. 97; *Sweet* v. *S.* [1895], 1 Q. B. 12; 64 L. J. Q. B. 108. A covenant by the wife to indemnify the husband against antecedent debts is not a usual covenant in a separation deed: *Brailey* v. *B.* [1922], P. 15; 91 L. J. P. 65.

Provisions of separation deed generally avoided by reconciliation.

The general rule is that the provisions of a separation deed come to an end if the parties become reconciled and resume cohabitation: *Bateman* v. *Ross* (1813), 1 Dow, 235; *Nicol* v. *N.* (1886), 31 Ch. D. 524; 55 L. J. Ch. 437; as to resumption of cohabitation, see article in (1926), 70 Sol. J. 627–8. But it is a question of construction whether any particular provision is intended to remain in force afterwards; when such an intention is shown, the deed will operate to that extent as a post-nuptial settlement: *Ruffles* v. *Alston* (1875), L. R. 19 Eq. 539; *Re Spark* [1904], 1 Ch. 451; [1904], 2 Ch. 121 (C. A.). On a reconciliation it is not contrary to public policy to provide for the future maintenance of the wife if the parties again agree to separate: *MacMahon* v. *M.* [1913], 1 Ir. R. 428; *Re Meyrick* [1921], 1 Ch. 311; 90 L. J. Ch. 152.

A deed made in contemplation of a separation which never takes place is void: *Bindley* v. *Mulloney* (1869), L. R. 7 Eq. 343; and a separation deed providing an allowance for a wife is void if the marriage was invalid: *Law* v. *Harrigan* (1917), 61 Sol. J. 546. A deed may be set aside for fraudulent misrepresentation by the husband as to his means: *Hulton* v. *H.* [1917], 1 K. B. 813.

Stamp.

The stamp on a separation deed is 10*s.*; where it contains a covenant for the payment of an annuity, an *ad valorem* stamp (2*s.* 6*d.* for every £5) on the "sum periodically payable," is charged. *Semble,* the Finance (1909-10) Act, 1910, s. 74 (5), does not alter this, but the stamp should be adjudicated.

Weekly sum.

As the *ad valorem* stamp is calculated on "the sum periodically payable," it is advisable to make the annuity payable weekly, so that the stamp duty will be only *ad valorem* on the weekly sum: *Jackson* v. *I. R. C.* (1902), 50 W. R. 666; *Hulse* v. *H.* (1910), 54 Sol. J. 704; and *cf. Lewis* v. *I. R. C.* [1898], 2 Q. B. 290; 67 L. J. Q. B. 694; Highmore, 4th ed., 135, 136.

No. I.

DEED *of* SEPARATION *between* HUSBAND *and* WIFE, COVENANT *by* HUSBAND *to permit his* WIFE *to live separate;* COVENANTS *by the* TRUSTEE *to indemnify the* HUSBAND *against all obligations to* MAINTAIN *his* WIFE, *or to answer for her* DEBTS. PROVISION *as to* CUSTODY *of* CHILDREN.

Parties.

THIS SEPARATION DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the 1st part, C. B., of, &c., wife of the said A. B. (hereinafter called the Wife), of the 2nd part, and E. T., of, &c., and F. T., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Differences have arisen.

(1) Unhappy differences have arisen between the Husband and Wife, and they have accordingly agreed to live separate from each other for the future and to enter into such arrangement as is hereinafter contained:

Issue of marriage.

(2) The Husband and Wife have two children (namely), L. B., now of the age of —— years, and M. B., now of the age of —— years:

NOW, in pursuance of the said agreement and in consideration of the covenants hereinafter contained and of the premises, THIS DEED WITNESSETH and it is hereby agreed as follows:—

Covenants by the husband. (a)

1. THE Husband hereby covenants with the Wife, and as a separate covenant with the Trustees, as follows—

(1) That the Wife shall, and may at all times hereafter, notwithstanding her coverture, live separate and apart from the Husband, as if she were unmarried:

(2) That she shall henceforth be free from the control and authority of the Husband, and be at liberty to reside in such place and in such manner as she shall think fit:

(3) That the Husband will not at any time hereafter require her to live with him, or institute any legal proceedings or take any other steps whatsoever for that purpose:

(4) That he will not in any wise molest or interfere with the Wife in her manner of living or otherwise:

(5) That the Husband will (b) during the joint lives of himself and the Wife if they shall so long live separate from each other, (c)

(a) Where a covenant to live apart has been omitted from a deed of separation it may be implied from the recital: *Re Weston* [1900], 2 Ch. 164; 69 L. J. Ch. 555.

The covenant with the trustees jointly also operates as a covenant with each of them: L. P. Act, 1925, s. 81. It is not necessary in this case to have more than one trustee as a surety.

Annuity.

(b) Income tax can be deducted from the annuity: *Re Barry* [1906], 2 Ch. 358; *Re Hatch* [1919], 1 Ch. 351; 88 L. J. Ch. 147; see *Burroughes* v. *Abbott* [1922], 1 Ch. 86; 91 L. J. Ch. 157; and 156 L. T. Newsp. 420; 33 L. Q. R. 172. A covenant to pay an annuity to the wife during her life if she should "so long continue to live separate and apart" ceases on the husband's death: *Re Gilling* [1905], 74 L. J. Ch. 335. See Preliminary Note as to stamp duty. If the annuity is to be "for such a sum as after deducting income tax and super tax (if any) shall amount to a net annual sum of £——" then an obligation should be imposed on the wife to claim any reduction to which she may be entitled, and to account to the husband for the money recovered after deducting costs.

Annuity free of tax.

Sums payable to the wife under this covenant can be proved in the husband's bankruptcy; but on his bankruptcy no action can be maintained for arrears or future payments: *Victor* v. *V.* [1912], 1 K. B. 247; 81 L. J. K. B. 354.

An agreement for separation cannot, though an order can, effectively provide that an allowance is to be paid free of tax: *Daynell-Steyning* v. *D.-S.* [1922], P. 280. As to the correct form of order: *ib.*; *Smith* v. *S.* [1923], P. 191. Even if the agreement is to be made a rule of court: *Croft* v. *C.* (1922), 38 T. L. R. 648; it must stipulate, in effect, for payment of an additional sum equal to the tax if a net sum is to be paid: *cf. Burroughes* v. *Abbot, supra*; *Re Gordon* [1924], 1 Ch. 146.

Dum casta clause.

(c) There are cases in which it would be prudent (see *Wasteneys* v. *W.* [1900], A. C. 446; 69 L. J. P. C. 83) on the part of the husband to stipulate that pay to the Trustees the annual sum of £—— to be held by them UPON TRUST for the Wife without power of anticipation, the said annual sum to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment thereof to be made on the —— day of —— next [*or*, to be paid by equal weekly instalments on each Saturday, the first payment to be made on the Saturday next after the date hereof]: PROVIDED as follows—

(i) The said annual sum shall cease if the marriage between the Husband and Wife shall at any time hereafter be dissolved by a court of competent jurisdiction ;(*d*)

(ii) The Husband may give a direction to his bankers to pay the said annual sum to the bankers of the Wife to be placed to her credit, and such payments when made shall be accepted in or towards satisfaction of the said annual sum.

[(5A) All property and things in action (if any) now belonging to the Wife for any estate or interest, whether in possession, reversion or otherwise, shall belong to her for her separate use :(*e*)]

(6) If the Wife dies intestate in the lifetime of the Husband all property and things in action (if any) of the Wife

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the payment shall continue so long only as the wife remains chaste. In such a case the words "and the Wife shall continue to lead a chaste life" should be introduced here. Such a condition could not be insisted on in the absence of an express stipulation: *Hart* v. *H.* (1881), 18 Ch. D. 670; 50 L. J. Ch. 697; *Bradley* v. *B.* (1882), 7 P. D. 237; 51 L. J. P. 87; *Sweet* v. *S.* [1895], 1 Q. B. 12; 64 L. J. Q. B. 108. Where a separation deed contained a recital to the effect that a sum should be paid to the wife while chaste, a *dum casta* clause was implied in the operative part: *Crouch* v. *C.* [1912], 1 K. B. 378; 81 L. J. K. B. 275.

"Living separate."

As to the meaning of "live separate from each other," see *Rowell* v. *R.* [1900], 1 Q. B. 9; 69 L. J. Q. B. 55, where it was held that occasional acts of marital intercourse may take place without necessarily putting an end to the separation; see also *Macan* v. *M.* [1900], 70 L. J. Q. B. 90.

Provision made for wife by separation deed liable to be altered by court in the event of a divorce.

(*d*) In the absence of this proviso, the court would have power, under the Jud. Act, 1925, s. 192, after a decree for dissolution of the marriage, to relieve the husband either wholly or partially from the covenant: *Worsley* v. *W.* (1872), L. R. 1 P. & M. 648; 38 L. J. P. 43; *Bullock* v. *B.* (1869), L. R. 2 P. & M. 389; 41 L. J. P. 83; *Jump* v. *J.* (1883), 8 P. D. 159; 52 L. J. P. 71; *Churchward* v. *C.* [1910], P. 195; 79 L. J. P. 59; *Bosworthick* v. *B.* [1926], P. 159. If the annual sum is made payable so long only as the wife remains chaste, this proviso will be omitted as unnecessary, though in case of a previous undisclosed adultery it may be safer to retain the proviso.

Alimony.

Under the Jud. Act, 1925, s. 190, the court can grant maintenance and alimony on any decree for dissolution or nullity of marriage: *K.* v. *K* [1910], P. 140; 79 L. J. P. 33. See also Chap. II, Sect. V, *supra*.

(*e*) This provision will be unnecessary if the marriage took place after 1882.

which, but for this provision, would on her death go and belong to the Husband as statutory next-of-kin or (as respects entailed interests) as tenant by the curtesy, or otherwise, shall go to and be held IN TRUST for the persons and in the manner to whom and which the same would have gone if the Husband had died in her lifetime, and the Husband shall renounce all rights to obtain representation to her estate.(*f*)

Covenants by the wife and her trustees.

2. THE Wife and the Trustees as her sureties hereby jointly and severally covenant with the Husband as follows—

(1) That the Wife and the Trustees will at all times hereafter,(*ff*) during the continuance of the said separation, save harmless and keep indemnified the Husband from and against all debts and liabilities hereafter to be contracted or incurred by the Wife, whether for her wearing apparel, maintenance, support or otherwise, and from and against all claims and demands in respect thereof:

(2) That the Wife, or any person on her behalf, will not at any time hereafter commence or prosecute any action or other proceeding (*g*) for compelling the Husband to cohabit with the Wife or to allow her any support, maintenance or alimony (except the said annual sum hereinbefore covenanted to be paid to her,(*h*)) and will not molest (*i*) the Husband in any manner.

Rights of husband on intestacy of wife.

(*f*) As to the husband's beneficial rights on an intestacy where the wife dies after 1925: Ad. of E. Act, 1925, s. 46. He may become entitled to an equitable estate by the curtesy under L. P. Act, 1925, s. 130.

(*ff*) This is correct, see *Brailey* v. *B.* [1922], P. 15; 91 L. J. P. 65.

Covenant not to sue ineffectual in certain cases.

(*g*) A covenant by a wife in a separation deed that all proceedings instituted against her husband shall be stayed, and that she will not revive them, does not preclude the wife from setting up former acts of cruelty coupled with subsequent adultery in a suit for dissolution: *Norman* v. *N.* [1908], P. 6; 77 L. J. P. 8; *Balcombe* v. *B.* [1908], P. 176; 77 L. J. P. 81; *cf. Rose* v. *R.* (1883), 8 P. D. 98; 52 L. J. P. 25; *McQuiban* v. *M.* [1913], P. 208; 83 L. J. P. 19.

A wife may, in certain cases, obtain a decree for restitution of conjugal rights, notwithstanding a deed of separation containing a covenant not to sue for restitution: *Kennedy* v. *K.* [1907], P. 49; 76 L. J. P. 34.

Effect of dissolution of marriage.

(*h*) This covenant is binding on the wife, though there may be afterwards a decree for judicial separation on account of the husband's adultery: *Gandy* v. *G.* (1882), 7 P. D. 168; 51 L. J. P. 41. But if there is a dissolution of the marriage, the court can vary the deed and order a larger sum for alimony: *Morrall* v. *M.* (1881), 6 P. D. 98; 50 L. J. P. 62; *Bishop* v. *B.* [1897], P. 138; 66 L. J. P. 69; *Barry* v. *B.* [1901], P. 87; 70 L. J. P. 17; and see Jud. Act, 1925, ss. 190, 192. Alimony granted by order of the court cannot be assigned or released: *cf. Underwood* v. *U.* [1894], P. 204; 63 L. J. P. 109; *Watkins* v. *W.* [1896], P. 222, nor can maintenance under Jud. Act, 1925, s. 190 (2). Alimony is not, nor is a sum paid under an agreement and taken into account in calculating maintenance, liable to equitable execution: *Walls Ltd.* v. *Legge*

Alimoney not assignable.

Agreement as to custody of children.

3. (1) THE Husband shall have the custody of the said L. B., and the Wife shall have the custody of the said M. B.:

(2) THE Husband shall have access to the said M. B., and the Wife shall have access to the said L. B. under such arrangements as shall from time to time be made between them for that purpose, or if they shall be unable to agree, then under such arrangements as shall be made by the Trustees.(*j*)

IN WITNESS, &c.

No. II.

DEED *of* SEPARATION *between* HUSBAND *and* WIFE *where there has been a* MARRIAGE SETTLEMENT (*another Form where there is no Trustee*).(*k*)

Parties.

THIS SEPARATION DEED is made, &c., BETWEEN A. B.,

[1923], 2 K. B. 240; *secus*, maintenance under *ib.*, s. 190 (1); *Harrison* v. *H.*, 13 P. D. 180. The order (enforceable only in the P. D. and A. Division though arrears may be claimed in an administration action: *Re Stillwell* [1916], 1 Ch. 365), may make it payable free from deduction for income tax either expressly or by implication: *Daynell-Steyning* v. *D.-S.* [1922], P. 280; *q.v.*, as to form of order: *Smith* v. *S.* [1923], P. 191, but a subsequent deed of covenant cannot make it payable free from the tax: *Blount* v. *B.* [1916], 1 K. B. 230; *cf. Burroughes* v. *Abbott* [1922], 1 Ch. 86; 91 L. J. Ch. 157.

Income tax.

(*i*) As to what is molestation: *Fearon* v. *Earl of Aylesford* (1884), 14 Q. B. D. 792; 54 L. J. Q. B. 33; *Sweet* v. *S.* [1895], 1 Q. B. 12; 64 L. J. Q. B. 108; *Hunt* v. *H.* [1897], 2 Q. B. 547; 67 L. J. Q. B. 18.

"Molestation."

(*j*) The father has at common law the right to the custody of all his infant children, but under the Guardianship of Infants Act, 1925, the father and mother have equal rights, and see *Re Thain* [1926], Ch. 576. The Custody of Infants Act, 1873, s. 2, provides that no agreement contained in any separation deed made between the father and mother of an infant should be held invalid by reason only of its providing that the father shall give up the custody or control of the infant to the mother, but with a proviso that no court shall enforce such agreement if it will not be for the benefit of the infant to give effect thereto. Under the Guardianship of Infants Act, 1886, s. 5, as extended by *ib.*, 1925, s. 3, the court may, on the application of the mother, make such order as it may think fit regarding the custody of any infant and the right of access thereto of either parent. Thus the court has full jurisdiction as to custody. As to the principles which guide the court in cases relating to the custody of infants: *Re Taylor* (1876), 4 Ch. D. 157; 46 L. J. Ch. 399; *Re Besant* (1879), 11 Ch. D. 508; 48 L. J. Ch. 497; *Re A. and B.* [1897], 1 Ch. 786; 66 L. J. Ch. 592; *Re G.* [1899], 1 Ch. 719; 68 L. J. Ch. 374; *Re X.* [1899], 1 Ch. 526; 68 L. J. Ch. 265; *F.* v. *F.* [1902], 1 Ch. 688; 71 L. J. Ch. 415; *Ward* v. *Laverty* [1925], A. C. 101; *Re Thain, supra.* As to appointment of guardians: Act of 1925, ss. 4, 5 and 6; as to summary jurisdiction: *ib.*, s. 7; see also Custody of Children Act, 1891.

Who is entitled to the custody of the children after separation of the parents.

Where a decree for judicial separation or divorce is made by the court (see Jud. Act, 1925, s. 192; Guardianship of Infants Act, 1886, s. 7), non-compliance with an order for restitution does not prevent the court from allowing the defaulter to retain custody: *W.* v. *W.* [1926], P. 111.

(*k*) See notes to last Precedent. Notice of this deed must be given to the settlement trustees.

of, &c. (hereinafter called the Husband), of the one part, and C. B., the wife of the said A. B. (hereinafter called the Wife), of the other part: WHEREAS :—

Agreement for separation.

(1) Unhappy differences have arisen between the Husband and Wife, and they have agreed to live separate from each other in future, and to enter into such arrangement as is hereinafter contained:

Settlement on marriage.

(2) By a Settlement dated, &c., and made, &c. (being a Settlement made in consideration of the marriage of the Husband and Wife), whereof E. F. and G. H. are the present trustees, certain investments and other property (therein and hereinafter called the Husband's Trust Fund and the Wife's Trust Fund respectively) were settled by or on behalf of the Husband and Wife respectively upon trusts under which the income of the Husband's Trust Fund is payable to the Husband during his life and the income of the Wife's Trust Fund is payable to the Wife during her life, without power of anticipation, and the income of both the Trust Funds is payable after the death of either of them to the survivor of them during his or her life:

No issue.

(3) There has been no issue of the said marriage:

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH and it is hereby agreed as follows:—

Parties to live separate.

1. THE parties hereto will henceforth live separate from each other, and neither of them will take proceedings against the other for restitution of conjugal rights, or molest or annoy or interfere with the other in any manner whatsoever.

Wife to have yearly sum out of income of Husband's Trust Fund.(*l*)

2. (1) THE yearly sum of £——, part of the income of the Husband's Trust Fund, shall (in addition to the income of the Wife's Trust Fund payable to her as aforesaid) be paid to the Wife during the joint lives of the Husband and Wife, without power of anticipation, if they shall so long live separate from each other [and she shall continue to lead a chaste life], by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of —— next:

(2) THE Husband, As Settlor, hereby assigns to the Wife the said yearly sum and directs the trustees for the time being of the said Settlement to pay the same to her accordingly.

[All property of wife to be for her separate use.]

[(2A) ALL property and things in action (if any) now belonging

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(*l*) See Preliminary Note as to stamp duty, p. 567.

to the Wife for any estate or interest, whether in possession, reversion or otherwise, shall belong to her for her separate use].(*m*)

Wife to pay her own debts.

3. THE Wife shall pay her own debts and keep the Husband indemnified therefrom, and if the Wife shall make default in observing this covenant, all money which shall be paid by the Husband in respect of any debt or liability of the Wife may, notwithstanding the aforesaid restraint on anticipation, be retained by him out of the yearly sum payable to the Wife as aforesaid.

[Proceedings in Divorce Court to be stayed and no other proceedings taken for alleged past misconduct.]

[4. (1) THE petition presented to the Probate Division of the High Court of Justice by the —— shall be withdrawn, and all costs incurred in relation thereto shall be paid by the Husband:

(2) NO new or other proceedings shall be taken by either party in the said Court on account of any alleged misconduct of either party before the date hereof.]

IN WITNESS, &c.

No. III.

SEPARATION AGREEMENT (*a Short Form suitable for* PERSONS *of the* WORKING CLASS).(*n*)

Parties.

THIS SEPARATION AGREEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the one part, and C. B., the wife of the said A. B. (hereinafter called the Wife), of the other part:

Introductory recital.

WHEREAS unhappy differences having arisen between the parties hereto, they have agreed to enter into the arrangement hereinafter contained:

NOW IT IS HEREBY AGREED as follows:—

Parties to live separate.

1. THE parties shall henceforth live separate and apart from each other, and neither of them shall molest the other.

(*m*) This clause does not exclude the husband's right in the event of intestacy but see last Precedent. It will be omitted if the marriage has taken place after 1882.

(*n*) In many cases a voluntary separation agreement will be found more in the interests of the parties than an application under the Summary Jurisdiction (Married Women) Act, 1895, for a separation order. See Guardianship of Infants Act, 1925, s. 7, as to summary jurisdiction respecting custody and maintenance of infants. The stamp on this agreement will be *ad valorem* on the weekly sum and a 6*d*. agreement stamp; see Preliminary Note, p. 567.

Husband to pay weekly sum to wife.

2. THE Husband shall pay to the Wife during their joint lives the weekly sum of —— shillings so long as she shall remain chaste, the same to be paid on every —— morning.

Wife to have custody of children and to maintain them out of weekly sum.

3. THE Wife shall have the custody of the children (namely) (*state their names and ages*), and shall, out of the said weekly sum, properly maintain and provide for the said children until they shall respectively attain the age of sixteen years, and shall keep indemnified the Husband against all claims in respect of such children. (*A provision might here be inserted, if desired, reducing the weekly sum as the children grow up.*)

Agreement to be void if children become chargeable to parish.

4. IF by reason of the neglect of the Wife the said children, or any of them, shall become chargeable to the parish, this agreement shall thenceforth be void.

IN WITNESS, &c.

CHAPTER IV.

NEW LAW OF WILLS.(a)

SECT. I.—*What property may be disposed of by Will, who may make a Will, how a Will must be executed and attested, and what is a revocation of a Will.*

What property might be disposed of by Will under old law.

THE Wills Act, 1837, enabled every person to dispose by Will of all real and personal estate which he was entitled to, at law or in equity, at the time of his death, and which, if not so disposed of, would under the old law have devolved upon his heir-at-law or customary heir, or if he became entitled by descent, upon the heir-at-law or customary heir of his ancestor, or upon his executor or administrator, including estates *pur autre vie*, contingent, executory, or other future interests, and rights of entry for conditions broken. A person in sole possession of land without any other title has a devisable interest: *Asher* v. *Whitlock* (1865), L. R. 1 Q. B. 1; 35 L. J. Q. B. 17; and a possibility of reverter on failure of a fee simple conditional is devisable as a right of entry for condition broken.(b)

Possibility of reverter.

EFFECT UNDER NEW LAW.

The following cannot be disposed of by a Will:—

(1) The corpse.

(2) Shares in a company if the articles prohibit such alienation.

(3) Rights of action of a personal nature.

(4) Friendly society benefits under a nomination.

(5) Wages, &c., payable by the Admiralty.

Where a testator dies after 1925, his Will takes effect to enable equitable interests to be disposed of, subject and without prejudice to the estate and powers of the personal representative: L. P. (Amend.) Act, 1924, 9th Sch., para. 3.

New law. Wills operate in equity.

(a) Generally on this subject, see Theobald, 7th ed.; Jarman, 6th ed.

(b) *Pemberton* v. *Barnes* [1899], 1 Ch. 544; 68 L. J. Ch. 192. The doubt whether a bastard without issue could dispose of real estate or chattels real is removed by L. P. Act, 1925, s. 178.

Bastards' Wills.

Title of personal representatives.

Trust and mortgage estates.

Under Ad. of E. Act, 1925, Pt. I, all the disposable interests of a testator in real estate, including chattels real, together with trust and mortgage estates, pass to the personal representatives. Trust estates, include "settled land," but in this case separate representation will be granted to the S. L. Act trustees: *ib.*, ss. 22–24; Jud. Act, 1925, s. 162. Where no S. L. Act trustees have been appointed, or they have renounced, and the tenant for life has died intestate, the next person entitled to the fee simple (the land having ceased to be settled land) may take out a separate grant of administration limited to the land under Jud. Act, 1925, s. 155.

General powers.

Entailed interests.

An appointment under a general testamentary power operates to pass the real estate and chattels real appointed to the personal representatives: *ib.*, s. 3 (2). Similarly if an entailed interest in property in possession is disposed of under L. P. Act, 1925, s. 176, it will vest in the personal representatives: Ad. of E. Act, 1925, s. 3 (3).

No copyholds.

Production to steward.

There are no copyhold estates after 1925: L. P. Act, 1922, Pt. V, hence the Cop. Act, 1894, s. 88, becomes obsolete: L. P. (Amend.) Act, 1924, 9th Sch., para. 6. The enfranchised lands will after 1925 pass to the personal representatives; nor will it be necessary to produce the probate to the steward till some dealing with a legal estate takes place (not being the grant of a lease or tenancy for a year or less or from year to year), but a dealing includes an assent: L. P. Act, 1922, s. 129 (9).

Lunatics.

Though in the case of a lunatic or defective living and of full age on 1st January, 1926, who dies intestate, without having recovered his testamentary capacity, the heir-at-law does not lose his beneficial rights in the real estate, still the real estate will vest in the personal representatives, and the title of the heir will remain to be completed by an assent in writing: Ad. of E. Act, 1925, s. 51 (2); as to assents, which are available assurances whether the deceased died testate or intestate: *ib.*, s. 36.

Assent requisite to pass a legal estate.

The general result is that a good equitable title can be obtained under a Will, but to clothe the person entitled, whether as beneficial owner, tenant for life or statutory owner (as trustee of settled land), trustee for sale, personal representative of a claimant or otherwise, an assent in writing is requisite for conferring a legal estate. For general purposes a title to land cannot be made without the legal estate: L. P. Act, 1925, s. 42. Assents may be said to be available for all assurances of interests in land (not being mortgage debts), save when the personal representatives are themselves making title for value, when a conveyance, deed of exchange, mortgage or lease should be employed according to the nature of the transaction.

Deaths before 1926.

Even where the testator or intestate dies before 1926, if the land is vested in personal representatives the new powers of assenting or conveying will be available: Ad. of E. Act, 1925, s. 36 (12).

Who may make a Will.

Infants.

A Will made by an infant is void: Wills Act, 1837, s. 7; unless made by a sailor or soldier while on active service: Wills (Sailors and Soldiers) Act, 1918; *Re Wernher* [1918], 2 Ch. 82. In any case he cannot hold a legal estate: L. P. Act, 1925, s. 1. Moreover, if an infant dies after 1925 without having been married, and independently of Ad. of E. Act, 1925, s. 51 (3), he would have been equitably entitled under a settlement (including a Will) to a fee simple or absolute interest in freeholds or in any property settled therewith or as freehold land, such infant will, by virtue of that section, be deemed to have had an entailed interest, hence the property will not pass under his intestacy to his representatives as part of his estate.

Married women.

Under the M. W. P. Act, 1882,(*c*) a woman married after 1882 has power to dispose by Will of all property belonging to her at the time of the marriage, or acquired by or devolving on her afterwards, and a woman married before 1883 has the same testamentary power over property her title to which (in possession, reversion, or remainder) accrues after 1882: M. W. P. Act, 1882, ss. 2, 5; while the M. W. P. Act, 1893, s. 3, makes the Will of a married woman operate upon all the property to which she was entitled at her death: *Re James* [1910], 1 Ch. 157; 79 L. J. Ch. 45.

Traitors and felons.

Traitors and felons may dispose of their property by Will, but not otherwise: Theobald, 7th ed., 25; Forfeiture Act, 1870.

Lunatics, &c.

Lunatics, defectives, and other persons incapacitated by mental infirmity from disposing of property by deed are equally incapable of making a Will. A Will, made during a lucid interval, is valid: *Roe* v. *Nix* [1893], P. 55. For the purposes, however, of Ad. of E. Act, 1925, s. 51 (2), he will not be deemed to have recovered his testamentary power till his committee or receiver has been discharged. If a committee or receiver has not been appointed he is not treated as a lunatic.

(*c*) As to the law before this Act, see Theobald, 7th ed., 20: *Willock* v. *Noble* (1875), L. R. 7 H. L. 580; 44 L. J. Ch. 345.

Execution and attestation.

Under Wills Act, how Will must be executed.

Every Will made since the Wills Act, 1837, must be in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and the witnesses must attest and subscribe the Will in the presence of the testator, but no special form of attestation is prescribed.

As to appointments in exercise of power.

An appointment made by Will in exercise of any power must be executed in like manner, and such execution is sufficient, notwithstanding that some additional or other form of execution or solemnity may be required by the instrument creating the power: Wills Act, 1837, ss. 9, 10. This does not apply where the power does not in terms authorise an appointment by Will.

Sealing.

Thus, if the power is to appoint by a writing under the hand *and seal* of the donee, sealing is essential.(*d*)

Foreign domicile.

A Will properly and validly made according to the law of a testator's foreign domicile and admitted to probate in England may, without complying with these provisions, exercise a general or special testamentary power of appointment over trust funds of an English settlement.(*e*)

Soldiers and sailors.

The Wills of soldiers and sailors in actual service are excepted from the provisions of the Act as to execution.(*f*)

Position of the signature.

Under the Wills Act Amendment Act, 1852, the signature is sufficient if so placed at, or after, or following, or under, or beside, or opposite to, the end of the Will, that it is apparent on the face of the Will that the testator intended to give effect by his signature to the writing signed as his Will; but no signature is operative to give effect to any disposition or direction which is underneath or which follows it, or is inserted after the signature is made.(*g*)

Presumption that Will is duly executed

Where a Will has a formal attestation clause, and appears on the face of it to be properly executed, the court will presume

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(*d*) *West* v. *Ray* (1854), Kay, 385; 23 L. J. Ch. 447; *Taylor* v. *Meads* (1865), 4 D. J. & S. 597; 34 L. J. Ch. 203.

(*e*) *Re Simpson* [1916], 1 Ch. 502; 85 L. J. Ch. 329; *Re Lewal's Sett.* [1918], 2 Ch. 391; 87 L. J. Ch. 588; *Re Wilkinson* [1917], 1 Ch. 620; 86 L. J. Ch. 511.

"Actual service."

(*f*) S. 11; see also the Navy and Marines (Wills) Acts, 1865 and 1897; Merchant Shipping Act, 1894, s. 177. As to the meaning of "in actual service," see *Re Hiscock* [1901], P. 78; 70 L. J. P. 22; *Gattward* v. *Knee* [1902], P. 99; 71 L. J. P. 34; *Re Gordon* (1905), 21 T. L. R. 653; *In b. Stanley* [1916], P. 192; *In b. Anderson* [1916], P. 49; see also Wills (Sailors and Soldiers) Act, 1918; *Godman* v. *G.* [1920], P. 261; 89 L. J. P. 193.

(*g*) Theobald, 7th ed., 30; *In b. Usborne* (1909), 25 T. L. R. 519.

that the requirements of the Wills Act have been complied with, though the memory of the witnesses may have failed.(*h*) When the attestation clause is informal, the presumption *omnia rite esse acta* applies with less force; but even in that case, the leaning of the court is not to allow the testator's intention to be frustrated by lapse of time and failure of the memory of the witnesses; hence, if the circumstances are such as may reasonably result in the conclusion that the Will was duly executed, the court will adopt that conclusion.(*i*) Even where there is a regular attestation clause, the court cannot pronounce a Will to be duly executed in the face of the direct testimony of the attesting witnesses to the contrary.(*j*)

and attested, when it applies.

Where a Will is signed before the witnesses are called in, it is a sufficient acknowledgment by the testator of his signature if the signature is so placed that the witnesses might see it and they are asked by the testator to sign their names.(*k*)

Legacy to witness void.

Under the Wills Act, 1837, a legacy or other benefit given to an attesting witness,(*l*) or to his or her wife or husband,(*m*) is void, but the Will is in other respects good, and the legatee, &c., is an admissible witness.(*n*)

Creditor or executor a competent witness.

A creditor may be an attesting witness, so also may an executor: ss. 16 and 17.

Legacy to attesting witness rendered valid by subsequent codicil.

A legacy given by a Will to an attesting witness is rendered valid by a codicil confirming the Will attested by other witnesses.(*o*) It is not invalidated if the attestation was unnecessary: *Re Limond* [1915], 2 Ch. 240.

By what local

A Will disposing of land of any tenure (*oo*) must be executed

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(*h*) *Wright* v. *Sanderson* (1884), 9 P. D. 149; 53 L. J. P. 49; *Woodhouse* v. *Balfour* (1888), 13 P. D. 2; 57 L. J. P. 22; *Whiting* v. *Turner* (1903), 89 L. T. 71.

(*i*) *Vinnicombe* v. *Butler* (1865), 3 Sw. & Tr. 580; 34 L. J. P. 18; Theobald, 7th ed., 79.

(*j*) *Croft* v. *C.* (1865), 4 Sw. & Tr. 10; 34 L. J. P. 44; *Goodisson* v. *G.* [1913], 1 Ir. R. 31, 218.

(*k*) *Daintree* v. *Fasulo* (1888), 13 P. D. 67, 102; 57 L. J. P. 76; Theobald, 7th ed., 33; but see *In b. Arthur* (1871), L. R. 2 P. 273.

(*l*) *Re Craven* (1908), 24 T. L. R. 750; *Kearney* v. *K.*, 1911, 1 Ir. R. 137.

(*m*) *Cf. Thorpe* v. *Bestwick* (1881), 6 Q. B. D. 311; 50 L. J. Q. B. 320.

(*n*) S. 15; *Aplin* v. *Stone* [1904], 1 Ch. 543; 73 L. J. Ch. 456.

(*o*) *Anderson* v. *A.* (1872), L. R. 13 Eq. 381; 41 L. J. Ch. 247; *Re Trotter* [1899], 1 Ch. 764; 68 L. J. Ch. 363; Theobald, 7th ed., 120.

(*oo*) As to leasehold land, see *Duncan* v. *Lawson* (1889), 41 Ch. D. 394; 58 L. J. Ch. 502; *Pepin* v. *Bruyere* [1902], 1 Ch. 24; 71 L. J. Ch. 39; *Re Grassi* [1905], 1 Ch. 584; 74 L. J. Ch. 341. Proceeds of sale of English land are treated as "immoveables": *Re Berchtold* [1923], 1 Ch. 192.

law the execution of Wills must be regulated.

and generally will be construed according to the law of the country in which the property is situated, whatever may be the domicile of the testator. But a Will of moveable estate must be executed and generally will be construed according to the law of the country in which the testator is domiciled, subject, however, to the provisions of the Wills Act, 1861.(*p*)

A Will made abroad by a British subject to be admitted to probate here, if executed according to law of place where made.

By this Act it is provided that every Will or testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Northern Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of His Majesty's dominions where he had his domicile of origin.(*q*)

Will of personal estate in United Kingdom.

Further, every Will, &c., made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at his death) will, as regards personal estate, be held to be well executed, and will be admitted to probate, &c., if the same be executed according to the laws for the time being in force in that part of the United Kingdom where the same is made: Act of 1861, s. 2.

Change of domicile.

No Will, &c., will be held to be revoked, or to have become invalid, nor will the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.(*r*)

Revocation.

Will revoked by marriage.

Formerly a Will made since the Wills Act, 1837, was revoked by marriage, unless made in exercise of a power of appointment,

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(*p*) As to the doctrine of *renvoi* in France, and as to application of municipal law by English courts: *Re Annesley* (1926), W. N. 178; *Re Cunnington* [1924], 1 Ch. 68; query *Re Johnson* [1903], 1 Ch. 821, is of doubtful validity.

(*q*) S. 1. As to the execution of powers requiring formalities by a person domiciled abroad, see *Barretto* v. *Young* [1900], 2 Ch. 339; 69 L. J. Ch. 605; *Re Walker* [1908], 1 Ch. 560; 77 L. J. Ch. 370.

Wills of foreigners.

(*r*) S. 3; see *In b. Reid* (1866), L. R. 1 P. 74; 35 L. J. P. 43. This section applies to the Will of a foreigner: *Re Groos* [1904], P. 269; 73 L. J. P. 82; see also the Domicile Act, 1861. As to land in Scotland, see the Titles to Land, &c. (Scotland) Act, 1868, ss. 19, 20; *Connell's Trustees* v. *C.* (1872), 10 Court of Session Reports (3rd series), 627.

when the real or personal estate thereby appointed would not, in default of such appointment, have passed to the heir, customary heir, executor, or administrator, or the person entitled as next-of-kin under the old Statutes of Distribution.(*s*)

Wills in contemplation of marriage.

Where a Will (which includes a codicil) is, after 1925, expressed to be made in contemplation of a marriage, it will not be revoked by the solemnisation of the marriage contemplated : L. P. Act, 1925, s. 177. Where advantage is taken of this section an express provision should be inserted invalidating the disposition if the marriage is not solemnised within a fixed time. A Will so invalidated would not revoke a former Will.

Will may be revoked by another Will or burning, &c.

A Will or codicil may also be revoked by another Will or codicil duly executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.(*t*)

A partially torn Will, found in the possession of a testator, is presumed to have been torn by the testator, but an intention to revoke the Will must be proved by the person alleging revocation : *Jinkin* v. *Cowling* [1924], P. 113 ; 93 L. J. P. 43.

Interlineation, &c., must be executed.

No obliteration, interlineation, or other alteration will have any effect, except so far as the words or effect of the Will before such alteration shall not be apparent, unless such alteration is executed in like manner as is required for the execution of the Will ; but the Will, with such alteration as part thereof, is deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or in some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will : s. 21.

How revoked Will may be revived.

No revoked Will or codicil can be revived, otherwise than by re-execution, or by a codicil showing an intention to revive the same ; if any Will or codicil which is partly revoked and

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Agreement not to revoke.

(*s*) Wills Act, 1837, s. 18. This section still holds good subject to L. P. Act, 1925, s. 177 ; and see *Re Martin* [1900], P. 211 ; 69 L. J. P. 75 ; *Re Poole* [1919], P. 10 ; 88 L. J. P. 77 ; *Re Paul* [1921], 2 Ch. 1 ; 90 L. J. Ch. 446. As to the effect of an agreement not to revoke a Will : *In b. Heys* [1914], P. 192.

(*t*) S. 20 ; and see *Fawke* v. *Miles* (1911), 27 Times L. R. 202. S. 20 does not apply to the Wills of sailors and soldiers on active service : *Re Gossage* [1921], P. 194 ; 90 L. J. P. 201.

afterwards wholly revoked is revived, such revived instrument will not take effect as to so much thereof as had been revoked before the revocation of the whole, unless an intention to the contrary be shown: s. 22.

If a person makes a second Will, revoking the first, and then destroys or otherwise revokes the second, the first is not thereby revived.

Dependent relative revocation.

Where a Will is destroyed, the presumption is that the act was done *animo revocandi*, but this presumption may be rebutted by evidence that such *animus* did not exist: *In b. Mackenzie* [1909], P. 305; 79 L. J. P. 4. If a Will is destroyed or torn with the intention of setting up some other testamentary instrument, the act of destruction operates as a revocation only if the testamentary instrument intended to be thereby set up proves efficacious. The revocation in such case is called a dependent relative revocation.(*u*)

Presumption that Will not forthcoming has been destroyed by maker.

Where a Will known to have been duly executed and in the testator's possession is not forthcoming at his death, the presumption is that it has been destroyed by the testator himself *animo revocandi*, and the *onus probandi* rests on those who wish to defeat this presumption: *Allan* v. *Morrison* [1900], A. C. 604; 69 L. J. P. C. 141.

SECT. II.—*As to the time from which a Will speaks, what property passes under a general devise and bequest, and what words are sufficient to carry the fee simple.*

Every devise of real estate was formerly specific.

Formerly, every devise of freehold and copyhold lands included only such property as the testator was seised of or entitled to at the date of the Will.

Devise not to be rendered inoperative by any subsequent conveyance or act.

Under the Wills Act, 1837, s. 23, no conveyance or other act made or done subsequently to the execution of a Will is to prevent the operation of the Will with respect to such real or personal estate as the testator has power to dispose of at his death.

S. 23 does not apply where the subject of the gift is converted into something else.

Section 23 does not apply where the subject-matter of the gift is taken away and converted into something else. Thus, if the devised land is contracted to be sold, the purchase-money does

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(*u*) *Onions* v. *Tyrer* (1716), 2 Vern. 741; *Powell* v. *P.* (1866), L. R. 1 P. 209; *Cossey* v. *C.* [1900], 69 L. J. P. 17; *Re Irvin* (1909), 25 T. L. R. 41; *Adams* v. *Southernden* [1925], P. 177; Theobald, 7th ed., 42. As to power to revoke a mutual Will: *Re Oldham* [1925], Ch. 75.

Mutual Wills.

not pass to the devisee.(*v*) This is so, whether the land is the absolute property of the testator, or is comprised in a settlement and the testator is exercising a power of appointment over it.(*w*) If land devised by a Will is sold by the testator and then mortgaged to him by the purchaser, the mortgage money does not pass to the specific devisee.(*x*)

Will to speak from death.

Under s. 24 a Will is to be construed with reference to the real and personal estate comprised in it and takes effect as if it had been executed immediately before the testator's death, unless a contrary intention appears.

What is a contrary intention within s. 24.

The "contrary intention" referred to in s. 24 must be found in the Will itself: *Boyes* v. *Cook* (1880), 14 Ch. D. at p. 57; 49 L. J. Ch. 350; it need not be expressed in so many words or in some way quite free from doubt: *Cole* v. *Scott* (1849), 1 Mac. & G. 518; 19 L. J. Ch. 63. The date of the Will: *Re Wells* (1889), 42 Ch. D. 646; 58 L. J. Ch. 835, or a particular and precise description of the subject of the gift (*y*) may show a contrary intention.

Generic bequests.

A bequest of "My New 3¼ per Cent. Annuities" was held to comprise all the new 3¼ per Cents. which the testatrix had at her death. In that case Wood, V.-C., said: "When I refer to a particular thing, such as a ring or a horse, and I bequeath it as 'my ring' or 'my horse,' it seems to me there might be considerable difficulty in saying that the contrary intention to which the 24th section refers does not appear on the face of the Will; but when a bequest is of that which is generic, of that which may be increased or diminished, then, I apprehend, the Act requires something more on the face of the Will for the purpose of indicating such contrary intention than the mere circumstance that the subject of the bequest is designated by the pronoun 'my.'"(*z*)

(*v*) *Farrar* v. *Earl Winterton* (1842), 5 Beav. 1; *Moor* v. *Raisbeck* (1841), 12 Sim. 123; *Re Manchester, &c., Ry.* (1854), 19 Beav. 365.

(*w*) *Gale* v. *G.* (1856), 21 Beav. 349; *Blake* v. *B.* (1880), 15 Ch. D. 481; 49 L. J. Ch. 393; *Beddington* v. *Baumann* [1903], A. C. 13; 72 L. J. Ch. 155.

(*x*) *Re Clowes* [1893], 1 Ch. 214; *cf. Re Carter* [1900], 1 Ch. 801; 69 L. J. Ch. 426; *Re Bick* [1920], 1 Ch. 488.

(*y*) *Emuss* v. *Smith* (1848), 2 De G. & Sm. 722; *Webb* v. *Byng* (1854), 1 K. & J. 580; *Castle* v. *Fox* (1871), L. R. 11 Eq. 542; 40 L. J. Ch. 302; *Re Evans* [1909], 1 Ch. 784; 78 L. J. Ch. 441; *Re Davies* [1925], Ch. 642; 94 L. J. Ch. 337.

(*z*) *Goodlad* v. *Burnett* (1855), 1 K. & J. 341; *Douglas* v. *D.* (1854), Kay, 400; 23 L. J. Ch. 732. See and distinguish the cases where bequests of "my shares" or "my debentures" have been adeemed: *Re Gibson* (1866), Again, a "contrary intention" may appear from the words of gift referring to the present time, *e.g.*, "the house I now live in."(*a*)

Under old law general devise did not *primâ facie* include leaseholds or property over which testator had a power of appointment.

Before the Wills Act, 1837, a general devise of land included neither leasehold land nor land of any tenure over which the testator had a mere power of appointment, except in those cases in which he had no other land at the date of the Will upon which the Will could operate,(*b*) or unless an intention was to be clearly gathered from the Will to dispose of the leaseholds, or to exercise the power under the general devise. In the absence of an intention to exercise the power, a general bequest did not operate as an execution of general powers over personalty.

Rule altered by Wills Act, 1837.

"Real estate," meaning of.

Under s. 26 of the Wills Act a general devise of *land* will now pass leaseholds as well as freeholds and enfranchised lands.(*c*) Leaseholds may pass under a devise of the testator's real estate in a particular place: *cf. Moase* v. *White* (1876), 3 Ch. D. 763; 24 W. R. 1038; but a general devise of real estate without any reference to locality does not pass leaseholds.(*d*) For most purposes "real estate" in the Ad. of E. Act, 1925, includes leaseholds.

Effect under Wills Act of general devise as to property which testator has power to appoint.

The effect of s. 27 of the Wills Act is to put property over which the testator has a general testamentary power of appointment in the same position as his own property; (*e*) but only as respects such general powers as he actually possesses at the time of his death, hence a general bequest will not pass property under a general power granted by the Will of a person whom he predeceases: *Re Young* [1920], 2 Ch. 427; 89 L. J. Ch. 614.

L. R. 2 Eq. 669; 35 L. J. Ch. 596; *Re Lane* (1880), 14 Ch. D. 856; 49 L. J. Ch. 768; *Re Slater* [1907], 1 Ch. 665; 76 L. J. Ch. 472; *Re Herring* [1908], 2 Ch. 493; 77 L. J. Ch. 665; see also *Re Gillins* [1909], 1 Ch. 345; 78 L. J. Ch. 244; *Re M'Afee* [1909], 1 Ir. R. 124; *Re Kuypers* [1925], Ch. 244; 94 L. J. Ch. 253.

(*a*) *Cole* v. *Scott* (1849), 1 M. & G. 518; 19 L. J. Ch. 63; *Re Edwards* (1890), 63 L. T. 481; *Re Willis* [1911], 2 Ch. 563; 81 L. J. Ch. 8; but see *Wagstaff* v. *W.* (1869), L. R. 8 Eq. 229; 38 L. J. Ch. 528; *Re Champion* [1893], 1 Ch. 101; 62 L. J. Ch. 372; and generally on this section, see Theobald, 7th ed., 145; Carson, 2nd ed., 466. Compare and consider *Re Davies* [1925], Ch. 642; *Re Horton* [1920], 2 Ch. 1.

(*b*) *Rose* v. *Bartlett* (1631), Cro. Car. 293; *Gully* v. *Davis* (1870), L. R. 10 Eq. 562; 39 L. J. Ch. 684.

(*c*) *Cf. Re Guyton and Rosenberg* [1901], 2 Ch. 591; 70 L. J. Ch. 751.

(*d*) *Butler* v. *B.* (1884), 28 Ch. D. 66; 54 L. J. Ch. 197; *cf. Re Holt* [1921], 2 Ch. 17; 90 L. J. Ch. 410; where the testator had no real property at his death.

(*e*) Theobald, 7th ed., 239; and see *Re Simpson* [1916], 1 Ch. 502; 85 L. J. Ch. 329; *Re Waterhouse* [1918], 2 Ch. 269.

A general power given to the survivor of several persons may be exercised by a general devise in a Will executed by the ultimate survivor during their joint lives.(*f*) A power to appoint by will during coverture does not import a condition that the donee must die during coverture.(*g*)

Power given to survivor may be exercised by Will of person who afterwards becomes survivor.

A gift by Will of the residue of a testator's estate passes property over which the testator has, at the date of the Will, a general power of appointment, and also property over which he acquires such a power after the date of his Will.(*h*) This rule does not generally apply to the case of a special power: *Re Hayes* [1901], 2 Ch. 259; 70 L. J. Ch. 770.

Effect of residuary gift with regard to property subject to power.

Under s. 27 a general residuary bequest operates as an exercise of a general power: *Re Spooner's Trust* (1851), 2 Sim. N. S. 129; 21 L. J. Ch. 151, and general pecuniary legacies are bequests of personal property "described in a general manner" within the meaning of s. 27.(*i*)

Residuary bequest and pecuniary legacies.

A direction to the executors to pay the debts out of the testator's personal estate makes property over which he has a general power of appointment part of his assets.(*j*)

Direction to pay debts.

In some cases an appointment by Will under a general power makes the appointed property (whether real or personal) part of the testator's general estate, though some of the objects fail by lapse, so that the lapsed property or share formerly went to the testator's heir or next-of-kin, and not to the persons entitled in default of appointment. This is the case where the gift is to A. in trust for B., who dies before the testator.(*k*)

Appointment by Will makes fund part of testator's estate where power is general.

But where no trustee is interposed, it is a question of intention to be gathered from the whole Will whether the donee of the

Failure of express appointees.

(*f*) *Thomas* v. *Jones* (1862), 1 D. J. & S. 63; 32 L. J. Ch. 139; see also *Re Illingworth* [1909], 2 Ch. 297; 78 L. J. Ch. 701.

(*g*) *Re Safford's Settlement* [1915], 2 Ch. 211; 84 L. J. Ch. 766.

(*h*) *Stillman* v. *Weedon* (1848), 16 Sim. 26; 18 L. J. Ch. 46; criticized in *Re Hayes* [1900], 2 Ch. 332; 69 L. J. Ch. 691; *Patch* v. *Shore* (1862), 2 Dr. & Sm. 589; 32 L. J. Ch. 185; *Boyes* v. *Cook* (1880), 14 Ch. D. 53; 49 L. J. Ch. 350; *Airey* v. *Bower* (1887), 12 A. C. 263; 56 L. J. Ch. 742; and see *Re Wilkinson* [1910], 2 Ch. 216; 79 L. J. Ch. 600; Theobald, 7th ed., 242.

(*i*) *Hawthorn* v. *Shedden* (1856), 3 Sm. & G. 293; 25 L. J. Ch. 833; *Re Wilkinson* (1869), L. R. 4 Ch. 587; see also *Re Jacob* [1907], 1 Ch. 450; 76 L. J. Ch. 217; *Re Seabrook* [1911], 1 Ch. 151; 80 L. J. Ch. 61.

(*j*) *Wilday* v. *Barnett* (1868), L. R. 6 Eq. 193; *Re Hodgson* [1899], 1 Ch. 666; 68 L. J. Ch. 313; *cf. Re Davies' Trusts* (1871), L. R. 13 Eq. 163; 41 L. J. Ch. 97; *Re Power* [1901], 2 Ch. at p. 665; 70 L. J. Ch. 778.

(*k*) *Wilkinson* v. *Schneider* (1870), L. R. 9 Eq. 423; 39 L. J. Ch. 410; *Re Van Hagan* (1880), 16 Ch. D. 18; 50 L. J. Ch. 1.

power meant by the exercise of it to take the property dealt with out of the instrument creating the power for all purposes, or only for the limited purpose of giving effect to the particular disposition expressed.(*l*) In some cases (*m*) the former, and in others (*n*) the latter, intention has been held to be indicated.

Failure by revocation.

The failure of an appointment made under a general testamentary power occasioned by a subsequent revocation does not amount to a contrary intention within the meaning of the Wills Act, 1837, s. 27, so as to exclude the operation of that section.(*o*)

Where real estate, including chattels real, is appointed under a general power it will vest in the personal representatives : Ad. of E. Act, 1925, s. 3 (2).

Property passing to executor as such.

Personal property appointed in exercise of a general power is not property passing to the executor " as such " within the meaning of s. 9 of the Finance Act, 1894 : *O'Grady* v. *Wilmot* [1916], 2 A. C. 231 ; 85 L. J. Ch. 386, consequently estate duty payable thereon is a first charge on the property. Though real estate passes to personal representatives under Ad. of E. Act, 1925, Pt. I, that Act does not alter the incidence of death duties : *ib.*, s. 53 (3).

Power requiring express reference to it.

A power to appoint by a Will " expressly referring to this power " is not well exercised by a general bequest in a Will not referring to the power,(*p*) unless the bequest contains such words as " all property over which I shall have any power of disposition by Will."(*q*)

Delegation of personal discretion.

A power cannot be exercised in such a way as to delegate a personal discretion exercisable by the donee : *Re Greenslade* [1915], 1 Ch. 155 ; 84 L. J. Ch. 235, save under any statutory

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(*l*) *Re De Lusi's Trusts* (1879), 3 Ir. L. R. 232, 237 ; *Re Marten* [1902], 1 Ch. 314, 324 ; 71 L. J. Ch. 203.

(*m*) *Re Pinède's Settlement* (1879), 12 Ch. D. 667 ; 48 L. J. Ch. 741 ; *Coxen* v. *Rowland* [1894], 1 Ch. 406 ; 63 L. J. Ch. 179 ; *Re Marten, supra.*

(*n*) *Re Davies' Trust* (1871), L. R. 13 Eq. 163 ; 41 L. J. Ch. 97 ; *Re Boyd* [1897], 2 Ch. 232 ; 66 L. J. Ch. 614.

(*o*) *Re Jarrett* [1919], 1 Ch. 366 ; 88 L. J. Ch. 150 ; see also *Re Doherty Waterhouse* [1918], 2 Ch. 269 ; 87 L. J. Ch. 630.

(*p*) *Phillips* v. *Cayley* (1889), 43 Ch. D. 222 ; 59 L. J. Ch. 177 ; *Re Tarrant's Trust* (1889), 58 L. J. Ch. 780 ; *Re Davies* [1892], 3 Ch. 63 ; 61 L. J. Ch. 595.

(*q*) *Re Waterhouse* (1908), 98 L. T. 30 ; *Re Lane* [1908], 2 Ch. 581 ; 77 L. J. Ch. 774 ; see *Re Barker's Settlement* [1920], 1 Ch. 527 ; 89 L. J. Ch. 209, as to the effect of the word " appoint " in a case where the testator had no other power of appointment ; and see *Re Slack's Settlement* [1923], 2 Ch. 359 ; see also *Re Dunbar Buller* [1923], 2 Ir. R. 143.

or express power to delegate: T. Act, 1925, ss. 23, 25. The latter section has been amended by L. P. (Amend.) Act, 1926, Sch.

Act does not apply to special powers.

Section 27 of the Wills Act does not apply to special powers; hence a general devise of all the testator's property is not an execution of such a power,(r) even though he has no real estate of his own at the date of his Will.(s) For the valid exercise of a special power there must be either a reference to the power, or a reference to the property subject to the power, or an intention otherwise expressed in the Will to exercise the power.(t) The power conferred by L. P. Act, 1925, s. 176, to dispose of entailed interests in possession is nearly on the same footing.

Trust and mortgage estates, general devise before 1882.

A general devise in the Will of a person who died before 1882 included estates vested in the testator as a trustee or mortgagee, unless a contrary intention could be inferred from expressions in the Will or the purposes and objects of the testator: *Lord Braybroke* v. *Inskip* (1803), 8 Ves. 417.

Effect of devise without words of limitation.

Before the Wills Act, 1837, a devise of land without words of limitation conferred an estate for life only on the devisee, but an indefinite devise was frequently enlarged into a fee simple whenever an intention to dispose of such larger estate could be collected from the language of the Will: see *Coward* v. *Larkman* (1889), 60 L. T. 1. Since the Act a devise of real estate *without words of limitation* operates to pass the fee simple or other the whole estate or interest which the testator had power to dispose of, unless a contrary intention appears from the Will: s. 28. The rule is now the same in regard to conveyances made after 1925: L. P. Act, 1925, s. 60; though a conveyance by way of mortgage can only pass a term or a sub-term: *ib.*, ss. 85-86.

Gift to right heirs.

A devise or bequest to the testator's right heirs confers by purchase a joint tenancy on two or more persons who under the old law were co-heirs.(u)

(r) *Cloves* v. *Awdry* (1850), 12 Beav. 604; *Re Huddleston* [1894], 3 Ch. 595; 64 L. J. Ch. 157.

(s) *Re Mills* (1887), 34 Ch. D. 186; 56 L. J. Ch. 118; *Re Williams* (1889), 42 Ch. D. 93; 58 L. J. Ch. 451.

(t) Farwell on Powers, 3rd ed., 201; *Re Weston* [1906], 2 Ch. 620; 76 L. J. Ch. 54; *Wrigley* v. *Lowndes* [1908], P. 348, 352; 77 L. J. P. 148; *Re Ackerley* [1913], 1 Ch. 510; 82 L. J. Ch. 260; and see, generally, Theobald, 7th ed., 248–52.

(u) 3 & 4 Will. 4, c. 106, s. 3; *Owen* v. *Gibbons* [1902], 1 Ch. 636; 71 L. J. Ch. 338; L. P. Act, 1925, ss. 131, 132; Ad. of E. Act, 1925, s. 51 (1).

SECT. III.—*In what cases (not within the L. T. Act, 1897) trustees took the legal estate under a devise, and as to the extent of their estate.*

Old law.

New law: personal representatives take the legal estate.

The old law on this subject is discussed in the 21st edition of this work, Vol. II, pp. 770–73. It will be sufficient to note that under Ad. of E. Act, 1925, lands of every tenure, including trust and mortgage estates, pass to the personal representatives. It follows that no legal estate passes by a devise; the devisee may or may not have a right to require an assent to be made in his favour which will clothe him with a legal estate; but no infant is entitled to have a legal estate vested in him, he cannot hold it when it is expressed to be conveyed to him.

Application of L. T. Act, 1897, Part I, to equitable interests in copyholds.

Enfranchised land.

L. T. Act, 1897, Pt. I, did not apply to copyholds in respect of which the deceased was tenant on the court rolls, but an equitable estate or interest descended on the personal representatives: *Re Somerville and Turner* [1903], 2 Ch. 583; 72 L. J. Ch. 727. As there can be no copyholds after 1925, and the vesting provisions first in the 12th Sch. to the L. P. Act, 1922 (see also s. 135 of that Act as to the rights of personal representatives in regard to copyholds formerly renewable), and secondly, in the 1st Sch. to the L. P. Act, 1925, operate to vest the legal estate in the enfranchised land in the absolute owner, trustees for sale, tenant for life, statutory owner or personal representatives entitled to call for it under the new law, questions arising on the old law can seldom, if ever, arise.

Application of L. T. Act, 1897, to freeholds.

Powers of personal representatives to assent or make title, whenever the legal estate was acquired.

Under Pt. I of the L. T. Act, 1897, s. 2, all real estate (except as above) vested in the personal representatives as trustees for the persons by law *beneficially* entitled thereto, and those persons had the same right of requiring a transfer of real estate as persons beneficially entitled to personal estate had of requiring a transfer of such personal estate. Whether or not the personal representatives acquired the legal estate before 1926 or after 1925, they will now deal with any legal estate vested in them under the provisions of Ad. of E. Act, 1925, ss. 36 and 39, that is to say, they will either assent to the legal estate vesting in a person absolutely entitled, or in trustees on trust for sale, or in other personal representatives as such, or, if the land is settled, they will make a vesting assent in accordance with S. L. Act, 1925, s. 8. They can also make a title for the purposes of a sale, mortgage, lease, &c., under Ad. of E. Act, 1925, s. 39, whether their title was acquired before 1926 or after 1925.

Position of executors who do not prove.

It was decided under the L. T. Act, 1897, in *Re Pawley* [1900], 1 Ch. 58; 69 L. J. Ch. 6, that all the executors who did not renounce probate or disclaim had to join to convey the legal estate to a purchaser. The Conv. Act, 1911, s. 12, first enabled the executors who proved the Will alone to make title, whether probate was granted before or after the commencement of that Act, but it was not retrospective as regards dispositions made before that Act. Disclaimer is irrevocable while renunciation is not, for a renouncing executor may be allowed to prove.(v) Under the Ad. of E. Act, 1925, s. 8, proving executors may exercise all the powers of personal representatives, and this applies whether the testator dies before 1926 or after 1925; see also *ib.*, s. 2 (2).

Proving executors.

Devolution of real estate and chattels real.

After 1925 all real estate and chattels real, including trust and mortgage estates, devolve on the personal representatives of the deceased testator or intestate under Pt. I of the Ad. of E. Act, 1925, see in particular s. 3 for the interpretation of this part of the Act.

SECT. IV.—*Legacies, general and specific, vested and contingent, gifts of real or personal estate to children, next-of-kin, &c.*

Definition of a general legacy.

Legacies are either general or specific. A general legacy is a gift of money or something else to be paid, raised, or procured out of the testator's estate generally, and it is not necessarily a part of such estate. Thus, a gift of £100 money or £100 stock is a good legacy, though the testator may have no cash or no stock at his death, and in such a case his executors must raise or buy it out of whatever property he may leave. A bequest of stock in pounds, shillings and pence, being the exact amount thereof owned by the testator at the date of the will, is nevertheless a general legacy, unless a contrary intention appears: *Re Willcocks* [1921], 2 Ch. 327. A specific legacy is a gift of some specified part of the testator's property, as a gift of "all my furniture," or "all the furniture that I may leave at my death," or "all my shares and stock in a railway company," and such a gift will include whatever property of the kind described the testator may leave at his death. A specific bequest of "stocks, shares and securities now standing in my name" does not include

Definition of a specific legacy.

(v) *In b. Stiles* [1898], P. 12; 67 L. J. P. 23; Ad. of E. Act, 1925, s. 6; but without prejudice to the previous acts of or notices to any other personal representative.

Effect of grant after renunciation.

bearer bonds.(*w*) But the thing given must be severed from the rest of the testator's property and form the subject of a distinct gift. Thus, if a testator gives "all my leasehold property, furniture, stock-in-trade, and all other my estate and effects," then the whole gift is residuary: *Fielding* v. *Preston* (1857), 1 D. & J. 438. A debt forgiven by Will is a specific legacy.(*x*)

Abatement in case of deficiency of assets.

If there is a deficiency of assets to pay the testator's debts, the general legacies abate rateably: *Re Whitehead* [1913], 2 Ch. 56; 82 L. J. Ch. 302, but the specific legacies are not liable to abatement until the fund applicable for general legacies is exhausted, and see Ad. of E. Act, 1925, 1st Sch., Pt. II. A specific legatee was formerly entitled to have his legacy exonerated out of the general estate from charges created by the testator as distinguished from charges incidental to the property, such as the rent on leaseholds, or the calls on railway shares,(*y*) but this is now altered by Ad. of E. Act, 1925, s. 35.

Specific legatee rights of.

Ademption

It follows from the nature of a specific legacy, that if the testator has not at his death any article answering the description of the thing bequeathed, the legacy fails. If the gift is of something which was his property when he made his Will, and he parts with it before his death, it is said to be adeemed.(*z*)

Income of legacies.

The legatee is entitled to the income of a specific legacy from the testator's death.(*a*) A contingent bequest of leaseholds, neither vested in trustees nor preceded by a vested limited interest, with a gift over, formerly did not (*Re Eyre* [1917], 1 Ch. 351; 86 L. J. Ch. 257) carry intermediate rents and profits; but under L. P. Act, 1925, s. 175, it will do so unless the rents are otherwise expressly disposed of: 1 Wolst. and Cherry, 11th ed., 435.

Apportionment between specific and residuary legatees.

Under the Apportionment Act, 1870, all rent, dividends, and other periodical payments in the nature of income are to be considered as accruing from day to day,(*b*) but, in the case of

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(*w*) *Re Mayne* [1914], 2 Ch. 115; 83 L. J. Ch. 815; see *Re Hawkins* [1922], 2 Ch. 569; 91 L. J. Ch. 486.

(*x*) *Re Wedmore* [1907], 2 Ch. 277; 76 L. J. Ch. 486; and see *Re Goff* (1914), 111 L. T. 34.

(*y*) See *Bothamley* v. *Sherson* (1875), L. R. 20 Eq. 304; 44 L. J. Ch. 589; *Robertson* v. *Broadbent* (1883), 8 A. C. 812; 53 L. J. Ch. 266; *Re Pearce* [1909], 1 Ch. 819; 78 L. J. Ch. 484; see also *Re Compton* [1914], 2 Ch. 119; 83 L. J. Ch. 862.

(*z*) *Maclean* v. *M.* [1908], S. C. 838; and *cf. Re Clifford* [1912], 1 Ch. 29; 81 L. J. Ch. 220; *Re Brazier Creagh* [1913], 1 Ir. R. 232; *Re Jupp* [1922], 2 Ch. 359.

(*a*) *Maclaren* v. *Stainton* (1861), 3 D. F. & J. 202; 30 L. J. Ch. 723.

(*b*) *Pollock* v. *P.* (1874), L. R. 18 Eq. 329; 44 L. J. Ch. 168; *Re Griffith* dividends, the payment must be one which is made or declared in respect of a definite period, it need not, however, be one which is usually made or declared at recurring intervals: *Re Jowitt* [1922], 2 Ch. 442; 91 L. J. Ch. 449. But the Act does not extend to any case in which it is expressly stipulated that no apportionment shall take place.(*c*) Such stipulation can only be contained in the Will or other instrument of gift.(*d*) This Act is not excluded by a power to postpone sale, with a direction that, pending sale, the whole of the income of property actually producing income, shall be applied as income from the date of the testator's death: *Re Edwards* [1918], 1 Ch. 142; 87 L. J. Ch. 248. The Act applies to a "private company" under the Companies (Consolidation) Act, 1908: *Re White* [1913], 1 Ch. 231; 82 L. J. Ch. 149. Apportionment will not take place upon payment of arrears of interest on cumulative preference shares, after the testator's death: *Re Wakley* [1920], 2 Ch. 205; 89 L. J. Ch. 321.

Arrears.

Interest on general legacies.

A general legacy, if no time is appointed for its payment, carries interest at the rate of £4 per cent. per annum from the expiration of one year from the testator's death; this rule extends to legacies under the Will of a married woman made in exercise of a power (*e*) and to legacies payable out of a reversionary fund: *Re Walford* [1912], A. C. 658; 81 L. J. Ch. 828; but if a time for payment is mentioned, then the legacy will not carry interest before the appointed period—as if a legacy is directed to be paid to the legatee if and when he attains twenty-one: *Heath* v. *Perry* (1744), 3 Atk. 101; or after a life interest: see *Re White* (1909), 101 L. T. 780. *Secus* as to contingent or future specific gifts after 1925, where the intermediate income is not disposed of: L. P. Act, 1925, s. 175. If, however, the testator stood *in loco parentis* to an infant legatee, or had shown an intention that the legatee should be maintained, interest on the legacy was allowed for maintenance from the date of the death;(*f*) but a

Interest allowed for maintenance of infant.

(1879), 12 Ch. D. 655; *Jones* v. *Ogle* (1872), L. R. 8 Ch. 192; 41 L. J. Ch. 633; *Re Cox* (1878), 9 Ch. D. 159; 47 L. J. Ch. 735; *Re Muirhead* [1916], 2 Ch. 181; 85 L. J. Ch. 598.

(*c*) *Re Lysaght* [1898], 1 Ch. 115; 67 L. J. Ch. 65; *Macpherson's Trustees* v. *M.* [1907], S. C. 1067.

(*d*) *Re Oppenheimer* [1907], 1 Ch. 399; 76 L. J. Ch. 287; *Re Muirhead* [1916], 2 Ch. 181; 85 L. J. Ch. 598.

(*e*) *Tatham* v. *Drummond* (1864), 2 H. & M. 262; 33 L. J. Ch. 438.

(*f*) *Harvey* v. *H.* (1722), 2 P. Wms. 21; *Incledon* v. *Northcote* (1746), 3 Atk. at p. 438; *Re Moody* [1895], 1 Ch. 101; 64 L. J. Ch. 174; *Re Bowlby* [1904], general legacy to an infant which was contingent on events having no relation to the infancy of the legatee did not, under the old law, carry interest: *Re Abrahams* [1911], 1 Ch. 108; 80 L. J. Ch. 83.

Annuity commences from death.

An annuity for life, given by Will, commences from the death of the testator and the first payment (where the Will is silent as to the time of payment) is due at the expiration of one year from that time.(*g*)

Appropriation of investment to meet legacy.

Where a vested legacy could not be paid at once by reason of the infancy of the legatee or for some other reason, the executor could not, before 1926, apart from an express power in the Will, appropriate and invest the amount, for such appropriation was not binding on the legatee. A power of appropriation is now conferred by Ad. of E. Act, 1925, s. 41, subject to the consents (if any) thereby required; the section applies whenever the testator or intestate died. In the case of a contingent legacy not bearing interest, no appropriation could formerly be made so as to prevent the legatee from claiming the full amount in cash when the contingency happened, but in the above section the expression "settled legacy or interest" includes a legacy or interest to which a person was not absolutely entitled in possession at the date of the appropriation.

Infants' trustees; appointment of.

Where an infant is absolutely entitled under a Will or an intestacy, trustees can be appointed of the share or interest under *ib.*, s. 42, instead of paying or transferring the property into court. Even under the old law, an executor who set aside and properly invested a reasonable sum of money to secure the legacy, might have distributed the residue of the estate, and was not held responsible if, when the legacy became payable, the investment turned out insufficient, but the residuary legatee might have had to refund any loss. The safest course under the old law was to pay into court,(*h*) but, subject to any order of court made before 1926, where a personal representative has

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2 Ch. 685; 73 L. J. Ch. 810; *Re Churchill* [1909], 2 Ch. 431; 79 L. J. Ch. 10; but *cf. Re West* [1913]. 2 Ch. 345; 82 L. J. Ch. 488; in which case the testator had made provision for the maintenance of the legatee out of another fund. The rule did not apply where the parent was the mother until she was actually standing *in loco parentis* to the legatee: *Re Eyre* [1917], 1 Ch. 351; 86 L. J. Ch. 257. As to a legacy to an adult subject to the obligation of maintaining children to whom the testator stands *in loco parentis*, see *Re Ramsay* [1917], 2 Ch. 64; 86 L. J. Ch. 514.

In loco parentis.

(*g*) *Gibson* v. *Bott* (1802), 7 Ves. at p. 95; and see *Re Robbins* [1907], 2 Ch. 8; 76 L. J. Ch. 531; *Re Brunning* [1909], 1 Ch. 276; 78 L. J. Ch. 75.

(*h*) See *Rimell* v. *Simpson* (1849), 18 L. J. Ch. 55; *Re Hall* [1903], 2 Ch. 226; 72 L. J. Ch. 554; *Re Salaman* [1907], 2 Ch. 46; 76 L. J. Ch. 419; *Re Salomons* [1920], 1 Ch. 290; 89 L. J. Ch. 222.

retained the legacy or invested it in investments authorised by law for the purposes of the trust, he will not be liable for not having paid it into court: *ib.*, s. 42 (2).

Where an intestate dies after 1925, an infant will not take a vested interest under the statutory trusts until he attains twenty-one or marries: *ib.*, s. 47.

Legacy payable at a future day, whether vested or contingent.

Points decided on this subject.

When a legacy is given, payable at a future day, as on the legatee attaining a particular age, a question often arises whether the time for payment is annexed to the form or the substance of the gift; in other words, whether the arrival of the time is a condition precedent to the vesting of the legacy. Upon this subject the following points have been settled by the authorities: see also, Theobald, 7th ed., 580 *et seq.*

Where there is a complete gift independent of direction as to time of payment.

1. Where there is a gift complete in itself, with a direction super-added as to the time of payment, as a legacy given to A., to be paid to him at twenty-one, or to the children of A., to be paid to them respectively as and when they shall respectively attain twenty-one, the legacy vests immediately, and the payment only is postponed.(*i*) And it makes no difference that the direction as to the time of payment precedes the words of gift; thus, a direction to pay or assign a legacy and its investments to the children of A., as and when (not if and when) they shall respectively attain twenty-one, "to whom I give and bequeath the same accordingly," has been held to confer a vested interest on all the children living at the testator's death.(*j*)

Where time of payment is of the essence of the gift.

2. Where the time of payment is annexed to the gift itself, or where there is no gift except in the direction to pay or divide, as, for example, where a legacy is given to A. when he shall attain a certain age, or to the children of A. when they shall respectively attain a certain age, or where trustees are directed to pay a legacy to A., or to divide a trust fund among the children of A. "when" he or they shall attain a certain age, *and there is nothing more;* in each of these cases the legacy is contingent.(*k*)

Where interest is given to legatee, or for his maintenance.

3. But very slight circumstances in the context will alter the construction, particularly where the bequest is of a residue, and

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(*i*) *Vivian* v. *Mills* (1839), 1 Beav. 315; 8 L. J. Ch. 239; *Blease* v. *Burgh* (1840), 2 Beav. 221; 9 L. J. Ch. 226; *Booth* v. *B.* (1799), 4 Ves. 399; *Shrimpton* v. *S.* (1862), 31 Beav. 425; *Re Wrey* (1885), 30 Ch. D. 507; 54 L. J. Ch. 1098.

(*j*) *Re Bartholomew* (1849), 1 Mac. & G. 354; 19 L. J. Ch. 237; *King* v. *Isaacson* (1853), 1 Sm. & G. 371; 22 L. J. Ch. 455.

(*k*) *Hanson* v. *Graham* (1801), 6 Ves. 239; *Leake* v. *Robinson* (1817), 2 Mer. 363; *Chance* v. *C.* (1853), 16 Beav. 572; *Re Jobson* (1890), 44 Ch. D. 154; 59 L. J. Ch. 245; see also *Re Francis* [1905], 2 Ch. 295; 74 L. J. Ch. 487; *Re Earl of Caledon* [1915], 1 Ch. 150; 84 L. J. Ch. 319.

not of a legacy merely: *Pearman* v. *P.* (1864), 33 Beav. 394, 397. Thus, if a legacy is given to a person "at," or "when he attains," a certain age, and is accompanied by a gift of the interest in the meantime, or by a direction to apply such interest or any part thereof for his maintenance, or if the legacy is directed to be immediately separated from the estate, the legacy vests at once; and the same principle applies to a gift to a class of persons where there is a gift of the interest or a direction to apply the interest for their respective maintenance.(*l*)

Where income passes by statute.

It is conceived that, where the donee obtains the intermediate income by virtue of L. P. Act, 1925, s. 175, this would not operate to vest the capital, at any rate if the capital vests it will remain liable to be divested, so as to give effect to the intention of the testator.

Case in which principle does not apply to a gift to a class.

Where an entire fund is given to a class of persons at a given age with a direction to the trustees to apply the income of the fund, or any part of it, for the maintenance of the members of the class generally, not confining such direction to the share of each particular member, this does not create a vested interest in a member of the class who dies under the age.(*m*)

Where payment of legacy is postponed for convenience of estate.

4. Where the payment of the legacy is postponed for the convenience of the estate,—as if a legacy is directed to be paid to A., after the death of B., to whom a life interest is bequeathed,—A. takes a vested interest on the testator's death, the payment to A. being postponed only for the purpose of enabling B. to enjoy a prior life interest in the legacy: *Adams* v. *Robarts* (1858), 25 Beav. 658.

Gift on marriage, how construed.

A simple gift of a *legacy* to a woman, to be paid to her on her marriage, provided she marries with the consent of certain persons, has been held to be contingent.(*n*) But where a *residue* was bequeathed to trustees upon trust to pay the income to the testator's two grandnieces (who were both of age), until their

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(*l*) *Hanson* v. *Graham* (1801), 6 Ves. 239; *Watson* v. *Haynes* (1839), 5 M. & Cr. 125; 9 L. J. Ch. 49; *Re Hart's Trusts* (1858), 3 D. & J. 195; 28 L. J. Ch. 7; *Scotney* v. *Lomer* (1886), 31 Ch. D. 380; 55 L. J. Ch. 443; *Re Turney* [1899], 2 Ch. 739; 69 L. J. Ch. 1; *Re Gossling* [1903], 1 Ch. 448; 72 L. J. Ch. 433; *Re Williams* [1907], 1 Ch. 180; 76 L. J. Ch. 41; and *cf. Re Ricketts* [1910], 103 L. T. 278; *Re Lord Nunburnholme* [1912], 1 Ch. 489; 81 L. J. Ch. 347; *Re Hume* [1912], 1 Ch. 693; 81 L. J. Ch. 382; *Re Woolf* [1920], 1 Ch. 184; 89 L. J. Ch. 11; *Re Ussher* [1922], 2 Ch. 321; 91 L. J. Ch. 521; *cf. Re Blackwell* [1926], 1 Ch. 223.

(*m*) *Re Parker* (1880), 16 Ch. D. 44; 49 L. J. Ch. 587; *Re Mervin* [1891], 3 Ch. 197; 60 L. J. Ch. 671; and see *Re Williams, supra.*

(*n*) *Atkins* v. *Hiccocks* (1737) 1 Atk. 500; *cf. Vize* v. *Stoney* (1841), 1 D. & War. 337.

respective marriages, and from and after their respective marriages to assign to them their respective moieties, and one of the grandnieces afterwards died without having married, it was held that she took a vested interest in her moiety, one of the grounds of the decision being that there was a difference between a legacy and a residue with respect to the application of the rules as to vesting.(*o*)

Marriage with consent.

A condition of marriage with consent, attached to a gift of personal estate, is as a general rule void so far as the consent is concerned. This rule, however, does not apply where there is a gift over or an alternative gift.(*p*)

A condition in partial restraint of marriage is not void: *Jenner* v. *Turner* (1880), 16 Ch. D. 188; *Re Bathe* [1925], Ch. 377.

A gift of income not for life but merely until marriage followed by a gift over on marriage does not vest the capital: *Re Mason* [1910], 1 Ch. 695; 79 L. J. Ch. 605.

Legacies charged on land.

Statutory powers to secure capital and annual sums.

A legacy charged on real estate and given to a person on his attaining a certain age, or on some other event personal to the legatee, is contingent, unless there is a direction to the contrary,(*q*) though the legatee may be entitled to the intermediate income under L. P. Act, 1925, s. 175; but if real estate is given to A. for life, with remainder to B. in fee, charged with a legacy to C. payable on the death of A., the legacy vests at once, as it is evident that the payment is postponed merely because it is imcompatible with A.'s life interest that it should be raised in his lifetime: 1 Fearne's Cont. Rem., 10th ed., p. 556, n. Where a capital sum is to be charged on land, the land is generally devised to a trustee for term of years on trust to raise it. Where this is not done the personal representatives may limit the land to trustees for a term (generally an equitable term only should be limited, and see S. L. Act, 1925, s. 1 (1) (v)) on trust to raise the capital. They can also limit a rentcharge for giving effect to an annual or periodical sum: Ad. of E. Act, 1925, s. 40; these powers are in addition to the powers to assent or convey for the purpose of giving effect to the rights of the persons interested given by s. 36. Both trustees and personal representatives, when directed to pay or apply capital for any purpose, are given power to raise it by sale or mortgage: T. Act, 1925, s. 16.

(*o*) *Booth* v. *B.* (1799), 4 Ves. 399; see also *West* v. *W.* (1863), 4 Giff. 198.

(*p*) *Re Nourse* [1899], 1 Ch. 63; 68 L. J. Ch. 15; *cf. Re Whiting* [1905], 1 Ch. 96; 74 L. J. Ch. 207; and see *Re Park* [1910], 2 Ch. 322; 79 L. J. Ch. 502.

(*q*) *Watkins* v. *Cheek* (1825), 2 S. & St. 199; *Murkin* v. *Phillipson* (1835), 3 My. & K. 257; 3 L. J. Ch. 143.

Legacy charged on land devised is not affected by lapse of devise.

If a legacy charged on land is given on a contingency, and the contingency does not happen, the charge sinks for the benefit of the devisee.(*r*) On the other hand, if land is devised, charged with a sum of money, the lapse of the devise does not affect the charge: *Wigg* v. *W.* (1739), 1 Atk. 382. If a gift is made to A. with a gift over on a contingency (which happens) to B., and B. dies in the testator's lifetime, the subject of the gift falls into residue.(*s*) A contingent specific devise or bequest carries the income: L. P. Act, 1925, s. 175, so does a specific or residuary devise to trustees for persons whose interests are contingent or executory: *ib.*

Absolute devises and legacies modified by trusts which are not exhaustive.

Where an absolute gift of realty or personalty is modified by a trust, the absolute gift prevails to the extent to which the trust is not exhaustive: *Moryoseph* v. *M.* [1920], 2 Ch. 33; 89 L. J. Ch. 376. This rule applies equally to a devise or bequest to trustees in trust for the devisee or legatee as to a gift direct to the devisee or legatee in the first instance: *Re Harrison* [1918], 2 Ch. 59; 87 L. J. Ch. 433.

Gifts of Real or Personal Estate to Children.

The following rules of construction apply to gifts or limitations of real or personal estate to children as a class:—

Immediate gift to children.

1. That an immediate gift to the children of A. includes those only who are in existence at the testator's death (including a child *en ventre sa mere*: *Re Salaman* [1908], 1 Ch. 4; 77 L. J. Ch. 60, if there are any).(*t*) But if no child is then in existence, the gift takes effect as an executory devise or bequest, and all the children take as they are born: *Shepherd* v. *Ingram* (1764), Amb. 448; Theobald, 7th ed., 310.

Gift to children "born and to be born."

2. That an immediate gift to the children of A., "born and to be born," or "begotten and to be begotten," includes children born after the testator's death.(*u*)

Gift to A. for life, and then to his children.

3. That a gift to A. for life, with remainder to his children, includes all children living at the testator's death, or born afterwards.

(*r*) *Gawler* v. *Standerwick* (1788), 2 Cox, 15; *Remnant* v. *Hood* (1859), 2 D. F. & J. at p. 410; 30 L. J. Ch. 71.

(*s*) *O'Mahoney* v. *Burdett* (1874), L. R. 7 H. L. 388; 44 L. J. Ch. 56, n; and see *Re Mackinlay* (1911), 56 Sol. J. 142; *Re Bold* (1926), 95 L. J. Ch. 201.

(*t*) Hawkins on Wills, 3rd ed., p. 86; *Viner* v. *Francis* (1789), 2 Cox, 190; *Re Powell* [1898], 1 Ch. 227; 67 L. J. Ch. 148.

(*u*) *Mogg* v. *M.* (1811), 1 Mer. 654; *Gooch* v. *G.* (1853), 3 D. M. & G. 366; 22 L. J. Ch. 1089.

Gift to A. for life, and then to children of B.

4. That a gift to A. for life, with remainder to the children of B., includes all B.'s children living at the testator's death, or born in A.'s lifetime, but excludes those born afterwards.

Gift to children of a person who takes no life interest who attain twenty-one.

5. That a gift to the children of A. (who is alive at the testator's death but takes no prior life interest under the Will) who attain twenty-one includes those children only who are living at the death of the testator, if any child is then living who has attained twenty-one; and, if there is no such child then living, includes those children only who are living when the first child attains that age, *i.e.*, when the property or fund becomes vested in possession in respect of any one member of the class.(*v*)

Former devise to A. for life, with remainder to children who attain twenty-one.

Effect where one or more children attained twenty-one in A.'s life.

6. That where real estate was given before 1926 by way of legal limitation to A. for life, with remainder to his children who attained twenty-one, the children (if any) who attained twenty-one in A.'s lifetime took the whole, to the exclusion of any who were infants at his death.(*w*) This was because, according to the former rule applicable to legal remainders, the whole remainder vested in the first child who came of age in A.'s lifetime and only opened to let in others who also came of age in his lifetime. The case was not within the Contingent Remainders Act, 1877, now repealed,(*x*) because the particular estate did not determine before the remainder vested. This was one of the reasons why real estate was not, under the old law, limited to a person if and when he attained twenty-one, but was generally given to him for an estate tail.

New law.

After 1925 it is impossible to create legal estates by way of remainder or executory limitation. All such limitations must take effect as equitable limitations, for the only legal estates authorised are estates in fee simple in possession and terms of years absolute: L. P. Act, 1925, s. 1. It follows that the

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(*v*) *Andrews* v. *Partington* (1791), 3 Bro. C. C. 401; *Re Knapp's S.* [1895], 1 Ch. 91; 64 L. J. Ch. 112; *Re Deloitte* [1919], 1 Ch. 209; 88 L. J. Ch. 112; *cf. Re Faux* [1915], 84 L. J. Ch. 873; *Re Paul* [1920], 1 Ch. 99; 88 L. J. Ch. 530; Theobald, 7th ed., 308, where the exceptions to this rule are given.

(*w*) *Festing* v. *Allen* (1843), 12 M. & W. 279; and see *Re Canney* (1910), 101 L. T. 905; also Article in 61 Sol. J. 572.

Former contingent remainder could not operate as executory devise, except in cases within C. R. Act, 1877.

(*x*) This Act provided that every contingent remainder created after its passing which would have been valid as an executory devise had it not had a sufficient estate to support it as a contingent remainder should, in the event of the particular estate determining before the contingent remainder vested, be capable of taking effect as if the contingent remainder had originally been created as an executory devise.

The rule before the passing of the above Act was that where a devise was capable at the time of its creation of taking effect as a remainder, it could not be construed as an executory devise.

Contingent Remainders Act, 1877, is no longer required and has been repealed by L. P. (Amend.) Act, 1924, 10th Sch.

Saving from failure of estates converted into equitable interests.

But though remainders are converted into equitable interests, a contingent remainder which under the old law was valid, because it could only take effect, if it took effect at all, *eo instanti*, on the determination of the legal life estate which supported it, will nevertheless not fail by reason of being converted into an equitable interest: L. P. Act, 1925, 1st Sch., Pt. I. See also *ib.*, s. 161, abolishing the rule in *Whitby* v. *Mitchell* (1890), 44 Ch. D. 85, and the notes on that section in 1 Wolst. & Cherry, 11th ed., 412–413.

Forfeiture, merger or surrender of particular estate.

For the same reason the R. P. Act, 1845, s. 8 (as to forfeiture, surrender or merger of the particular estate), has been repealed by L. P. (Amend.) Act, 1924, 10th Sch., for, after 1925, remainders will always be supported by a legal estate vested in a trustee, generally the tenant for life or statutory owner, or his special personal representatives, and it will be quite immaterial whether or not the beneficial life interest is forfeited, merged or surrendered.

Effect under old law where no child attained twenty-one in A.'s life.

7. That where real estate was, before 1926, by a legal limitation, limited as in (6), then, if no child of A. had attained twenty-one at his death, the limitation to the children failed as a contingent remainder, but operated as if it had been an executory devise by virtue of the Contingent Remainders Act, 1877: See note (x) *supra*; and all the children were let in as they came of age.

Rule as to contingent remainders did not apply to equitable interests.

8. That the old rule as to legal remainders referred to in (6) never did apply to equitable interests, whether in real or personal estate, and it was not necessary as regards such interests that the trust for children should take effect immediately on the determination of the previous life estate. Consequently, if real or personal estate is given, whether before 1926 or after 1925, to trustees (so as, with respect to real estate, to vest in them the legal estate, this must be the case after 1925, for the tenant for life or statutory owner or personal representatives must be the trustees) in trust for A. for life and then for his children who attain twenty-one, the trust for children takes effect as an executory gift in favour of all the children as they come of age. (y)

Rule applicable under new law.

(y) *Astley* v. *Micklethwait* (1880), 15 Ch. D. 59; *Marshall* v. *Gingell* (1882), 21 Ch. D. 790; 51 L. J. Ch. 818; *Re Freme* [1891], 3 Ch. 167; 60 L. J. Ch. 562; *Re Brooke* [1894], 1 Ch. 43; 63 L. J. Ch. 159. As to the effect of the Land Transfer Act, 1897, on legal contingent remainders before 1926: *Re Robson* [1916], 1 Ch. 116; 85 L. J. Ch. 137.

Nevertheless, such a gift was objectionable because s. 42 of the Conv. Act, 1881, did not apply during a minority. This section is repealed as to sub-ss. (1), (2), (3) and (7) by S. L. Act, 1925, 5th Sch., and as to sub-ss. (4) and (5) by T. Act, 1925, 2nd Sch.; sub-s. (6) is obsolete, for there can be no undivided shares in land in possession and was, as to instruments coming into operation after 1925, repealed by L. P. Act, 1925, 7th Sch. Under the S. L. Act, 1925, s. 102, powers of management which can be exercised during a minority or pending a contingency are given to trustees appointed for that purpose, or, if there are none, to the S. L. Act trustees. During a minority either the personal representatives or the S. L. Act trustees in whom the land is vested will be the statutory owners: *ib.*, s. 26. Where the instrument creating the trust comes into operation after 1925, full powers of maintenance and accumulation of surplus income during a minority are given by T. Act, 1925, s. 31. In regard to instruments coming into operation before 1926, the powers of Conv. Act, 1881, s. 43, are kept on foot: L. P. Act, 1925, 7th Sch.

Management, &c., during a minority.

Gift in remainder to children who attain twenty-one either before or after death of A.

9. That where real estate was legally limited before 1926 to A. for life with remainder to his children who attain twenty-one "either before or after A.'s death," the limitation to the children was an executory devise, and all the children were let in as they came of age.(*z*) The same rule must apply to equitable limitations after 1925.

Destination of rent of land while some shares remained contingent.

10. That where children took vested interests in real estate at twenty-one, the first child coming of age took the whole rent, and when a second came of age, the rent was divided between the two, and so on. Until one child came of age, the rent went as undisposed of, or if the gift was not residuary, fell into residue.(*a*) This afforded a further reason against limiting land to vest in a person at twenty-one instead of creating an estate tail; but where the gift to the children referred to the income as well as the capital an intention was shown that the income should be distributed amongst the children as from the death of the tenant for life. In this case, if the intermediate income accruing before the first child had attained a vested interest

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(*z*) *Re Lechmere* (1881), 18 Ch. D. 524; *Dean* v. *D.* [1891], 3 Ch. 150; 60 L. J. Ch. 553; *Re Wrightson* [1904], 2 Ch. 95; 73 L. J. Ch. 742; *White* v. *Summers* [1908], 2 Ch. 256; 77 L. J. Ch. 506.

(*a*) *Re Averill* [1898], 1 Ch. 523; 67 L. J. Ch. 233; *Re Walmsley's S. E.* (1911), 105 L. T. 332.

had fallen into residue it would have been payable to the tenant for life of the residue as income: *Re Stevens* [1915], 1 Ch. 429; 84 L. J. Ch. 432.

New law as to intermediate income.

A gift by Will coming into operation after 1925, though contingent, will generally carry the intermediate income from the testator's death except so far as the income is otherwise expressly disposed of: L. P. Act, 1925, s. 175; 1 Wolst. & Cherry, 11th ed., 435.

Destination of income of real or personal estate, or of mixed fund.

11. That where children take vested interests in personal estate at twenty-one, the intermediate income goes with the capital of each share; if a testator includes real and personal estate in the same gift, he shows an intention that the rule applicable to personalty shall apply also to the real estate, and the intermediate rents will go as the income of the personalty.(*b*) In Wills coming into operation after 1925 this rule will generally apply to real estate given separately from personal estate.

How Will should be framed where it is wished to give real and personal estate among children contingently.

If it is desired that the residue of a testator's property (real and personal) should be divided among a class of children contingently on any event, so that, whatever happens, both kinds of property should devolve on the same persons, the proper mode of carrying out this object is still to direct the conversion of the real estate into personalty, and to declare the trusts of the proceeds of both as a common fund. Where successive interests are to be taken, the property may be settled as realty. The former course is the best in the case of a class gift: see precedents of both kinds, *infra*.

Trust for sale when implied.

In any case, if there is a gift of real estate or chattels real in undivided shares or to joint tenants, a trust for sale will be implied: L. P. Act, 1925, ss. 34-36; S. L. Act, 1925, s. 36. But tenants for life can hold settled land as joint tenants: L. P. Act, 1925, s. 36; S. L. Act, 1925, s. 19. See also L. P. (Amend.) Act, 1926, Sch., amending L. P. Act, 1925, 1st Sch., Pt. IV, by inserting para. 4, relating to temporary tenants in common.

Distinction between land held on trust for sale and settled land.

It is still important to decide whether land should be devised on trust for sale or should be settled as land. In the former case the trustees for sale are the persons to make title, subject to any powers of leasing and accepting surrenders which they may have delegated; in the latter, the tenant for life, statutory

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(*b*) *Genery* v. *Fitzgerald* (1822), Jac. 468; *Hodgson* v. *Earl of Bective* (1863), 1 H. & M. 376; 32 L. J. Ch. 489; *Re Dumble* (1883), 23 Ch. D. 360; *Re Burton* [1892], 2 Ch. 38; 61 L. J. Ch. 702; *cf. Re Williams* (1886), 54 L. T. 831; *Re Mellor* [1922], 1 Ch. 312; 91 L. J. Ch. 393.

owner or personal representatives in whom the land is vested are the persons to make title, but in the case of tenants for life and statutory owners, after a vesting instrument has been executed. Directly a trust for sale becomes exercisable the land ceases to be "settled land."

Interest to be taken where power of appointment amounts to a trust.

Sometimes a power of appointment amongst children, or some other class of objects, is so expressed as to amount to a trust in favour of such objects in default of appointment, but there must be a clear indication in the Will that the testator so intended.(c)

Gift to individual and a class.

A gift to A. and the children of B. equally is *primâ facie* not a gift to a class, so that if A. dies before the testator, A.'s share will lapse; but it may be a class gift if there is a common tie between the beneficiaries and there is to be found in the Will a context which will show that the testator so intended: *Kingsbury* v. *Walter* [1901], A. C. 187; 70 L. J. Ch. 546.

A gift to "all my nephews hereinafter named" is not a gift to a class: *Re Bentley* [1914], 110 L. T. 623.

Legacies to illegitimate children.

Independently of the Legitimacy Bill now in Parliament, a gift to children *primâ facie* means legitimate children only; but reputed children born in the testator's lifetime, or *en ventre sa mère* at the date of his death and of the Will, take if an intention to that effect is sufficiently shown by expressions in the Will, coupled with the surrounding circumstances, but not of course a child begotten and born after the testator's death.(d) In the case of gifts to illegitimate children their names should be given in the Will. Where a testatrix gave a legacy to the "children of A." who were illegitimate, but whom she wrongly supposed to have become legitimated by the law of their domicile, the gift was allowed.(e) A gift to the future children of the testator, or of any other person, by a particular woman not being his wife, is void, because the fact of paternity cannot, consistently with public policy, be inquired into; but a gift to the future children of a particular woman, of whom the testator or any other specified person shall be the reputed father, is good as regards children born in the testator's lifetime, or *en ventre sa mère* at the date of the Will, because there is no objection to an inquiry as to

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(c) Farwell on Powers, 3rd ed., 524, *et seq.*; *Re Weekes' S.* [1897], 1 Ch. 289; 66 L. J. Ch. 179; *Re Walford* [1912], A. C. 658; 81 L. J. Ch. 828; *Re Llewellyn* [1921], 2 Ch. 281; 90 L. J. Ch. 493; *Re Combe* [1925], Ch. 210; 94 L. J. Ch. 267.

(d) *Crook* v. *Hill* (1876), 3 Ch. D. 773; 46 L. J. Ch. 119; *Re Pearce* [1914], 1 Ch. 254; 83 L. J. Ch. 266; *Re Bleckly* [1920], 1 Ch. 450; 89 L. J. Ch. 290.

(e) *Re Plant* (1899), 47 W. R. 183.

reputation of paternity.(*f*) Whether a child is legitimate, so as to be capable of taking under a gift to children, depends on the law of the father's domicile; this is so whether the subject-matter of the gift is real or personal estate: *Re Grey's Trusts* [1892], 3 Ch. 88; 61 L. J. Ch. 622. But a child illegitimate according to the law of England could not, before 1926, *inherit* land in England: *Doe* v. *Vardill* (1840), 7 Cl. & Fin. 895.

Legitimacy Bill.

If the Legitimacy Bill, as introduced, is passed this year by Parliament, it will come into force on 1st January, 1927. It will not affect any disposition coming into operation before that date or affect rights under an intestacy of a person dying before that date.

Legitimation by subsequent marriage.

The main object is to legitimate a child by the subsequent marriage of the parents. The date of legitimation is either the commencement of the Act or the date of the marriage, whichever last happens.

The mere legitimation is not to confer any rights in regard to property; these are dealt with separately for the benefit of the spouse and issue of the legitimated person. Provision is to be made for the spouse and issue of a person who would have been legitimated had he survived the marriage of his parents; also in regard to successions from a legitimated person or his issue on an intestacy.

Extraneous legitimation.

The position of persons who are legitimated by a subsequent marriage under Scottish, Colonial or foreign law is to be dealt with.

Rights of mother and illegitimate child.

It is also proposed to give to the mother of an illegitimate child a right to take on the intestacy of the child, and to give to an illegitimate child or his issue a right to take on the intestacy of the mother, provided she does not leave legitimate issue.

Gift to issue.

A gift to issue *primâ facie* includes all issue, but the context may show that the testator meant children only.(*g*)

Gifts to nephews and nieces.

Gifts to nephews and nieces do not generally include relatives by marriage: *Re Green* [1914], 1 Ch. 134; 83 L. J. Ch. 248; but the context or the circumstances may extend the meaning

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(*f*) *Occleston* v. *Fullalove* (1873), L. R. 9 Ch. 147; 43 L. J. Ch. 297; *Re Bolton* (1886), 31 Ch. D. 542; 55 L. J. Ch. 398; *Re Du Bochet* [1901], 2 Ch. 441; 70 L. J. Ch. 647; *Re Loveland* [1906], 1 Ch. 542; 75 L. J. Ch. 314.

(*g*) *Sibley* v. *Perry* (1802), 7 Ves. 522; *Bennett* v. *Houldsworth* (1911), 104 L. T. 304; Theobald, 7th ed., 318; but *cf. Re Embury* (1913), 109 L. T. 511; *Re Timson* [1916], 2 Ch. 362; *Re Burnham* [1918], 2 Ch. 196; 87 L. J. Ch. 617; *Re Swain* [1918], 1 Ch. 574; 87 L. J. Ch. 305.

of the word to include such relatives or the children of illegitimate brothers or sisters: *Re Helliwell* [1916], 2 Ch. 580; 86 L. J. Ch. 45.

Adoption of Children Act, 1926.

Under the Adoption of Children Act, 1926, s. 5 (2), the order does not deprive the child of any interest in property to which the child would have been entitled under any intestacy or disposition, or confer on the child any right in property as a child of the adoptor. "Child" and "issue" in a disposition do not include an adopted child or the issue of an adopted child unless the contrary intention appears.

Duties.

Sub-s. (3) provides for the rate of duty payable under a disposition by the adoptor or where the adoptor takes under a disposition.

Next-of-Kin, Personal Representatives, &c.

Gifts before 1926 to next-of-kin *simpliciter*, or to next-of-kin according to the Statutes of Distribution.

A gift, before 1926, to the next-of-kin of A., without more, created a joint tenancy in the persons who were nearest of kin to A. in equal degree without reference to the Statutes of Distribution.(*h*) If the gift, before 1926, was to the next-of-kin according to the Statutes of Distribution, or to the next-of-kin as if the *propositus* had died intestate (which was considered to import a reference to the statutes), all kindred entitled under the statutes took as tenants in common;(*i*) but a wife or husband (not being of the kin of A.) could not take under such a gift.(*j*)

At what time next-of-kin were ascertained.

Under a gift, before 1926, to the next-of-kin of the testator, whether the gift were immediate or preceded by a life interest, the persons to take were those who answered the description at the death of the testator, unless a contrary intention was clearly shown.(*k*) Such a gift excluded any person who would on intestacy have taken under the Intestates Estates Act, 1890, as that Act (now repealed) only applied to actual and complete intestacy: *Re Morgan* [1920], 1 Ch. 196; 89 L. J. Ch. 97.

(*h*) *Elmsley* v. *Young* (1835), 2 M. & K. 780; 4 L. J. Ch. 200; *Withy* v. *Mangles* (1843), 10 Cl. & Fin. 215; *Rook* v. *A.-G.* (1862), 31 Beav. 313; 31 L. J. Ch. 791; *Halton* v. *Foster* (1868), L. R. 3 Ch. 505; 37 L. J. Ch. 547; *Re Fergusson* [1902], 1 Ch. 483; 71 L. J. Ch. 360.

(*i*) *Bullock* v. *Downes* (1860), 9 H. L. C. 1; *Re Ranking's S.* (1868), L. R. 6 Eq. 601; *Re Gray's S.* [1896], 2 Ch. 802; 65 L. J. Ch. 858; *Re Nightingale* [1909], 1 Ch. 385; 78 L. J. Ch. 196; and see *Re Richards* [1910], 2 Ch. 74.

(*j*) *Cholmondeley* v. *Lord Ashburton* (1843), 6 Beav. 86; 12 L. J. Ch. 337; *Kilner* v. *Leech* (1847), 10 Beav. 362; 16 L. J. Ch. 503.

(*k*) *Bullock* v. *Downes* (1860), 9 H. L. C. 1; *Wharton* v. *Barker* (1858), 4 K. & J. 483; *Mortimore* v. *M.* (1879), 4 A. C. 448; 48 L. J. Ch. 470; *Re Maher* (1909), 1 Ir. R. 70; *Re Winn* [1910], 1 Ch. 278; 79 L. J. Ch. 165;

A gift, before 1926, to the persons entitled under the Statutes of Distribution excluded the husband, whose right did not take effect under those statutes.(*l*)

Old law preserved.

Trusts declared in an instrument *inter vivos* made, or in a Will coming into operation before 1926, by reference to the Statutes of Distribution, will, unless the contrary appears, be construed as referring to the enactments (other than the Intestates' Estate Act, 1890) which were in force before 1926: Ad. of E. Act, 1925, s. 50 (2).

Gifts after 1925.

References to any Statute of Distribution in an instrument *inter vivos* made, or in a Will coming into operation after 1925, will be construed as references to Pt. IV of the Ad. of E. Act, 1925 (see particularly ss. 46, 47): *ib.*, s. 50 (1). A limitation, no doubt, could be framed in favour of the pre-1926 statutory next-of-kin, but is obviously inexpedient. Again references in such an instrument or Will to "statutory" next-of-kin, will be construed, unless the context otherwise requires, as referring to the persons who would take beneficially under the foregoing provisions of that Act: *ib.*, s. 50 (1). Thus a gift to next-of-kin *simpliciter* still retains its old meaning, though a trust for sale will be implied in the case of joint tenants holding land.

Who takes under a gift to executors or administrators.

A bequest to A. for life, and after his death to his executors or administrators, vests the subject of the gift absolutely in A.; it makes no difference that, between the life interest and the ultimate gift, intermediate interests are given to other persons or a power of appointment is given to A. himself.(*m*) A gift to the executors or administrators of A., a deceased person, is a gift to his personal representatives as a part of his estate, and not to them beneficially.(*n*)

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and see *Re McFee* [1910], 79 L. J. Ch. 676; *Re Mellish* [1916], 1 Ch. 562; 85 L. J. Ch. 433; *Hutchinson* v. *National Refuges, &c.* [1920], A. C. 794; 89 L. J. Ch. 469; see also *Lucas Tooth* v. *L. T.* [1921], 1 A. C. 594; 90 L. J. Ch. 347.

(*l*) *Milne* v. *Gilbert* (1852), 2 D. M. & G. 715; 5 *ib.* 510; 23 L. J. Ch. 828.

(*m*) *A.-G.* v. *Malkin* (1845), 2 Ph. 64; 16 L. J. Ch. 99; *Page* v. *Soper* (1853), 22 L. J. Ch. 1044; *Grafftey* v. *Humpage* (1838), 1 Beav. 46; 8 L. J. Ch. 98; *Re Davenport* [1895], 1 Ch. 361; 64 L. J. Ch. 252. In *Mackenzie* v. *M.* (1851), 3 M. & G. 559; 21 L. J. Ch. 465, there was a gift to A., with remainder to his appointees, and A. appointed the property to his executors or administrators, and it was held that it formed part of his personal estate, which might be disposed of by him, or, in the event of his intestacy, would devolve on his representatives as such; see also *Burton* v. *Turner* (1920), 1 Ir. R. 8.

(*n*) *Long* v. *Watkinson* (1852), 17 Beav. 471; 21 L. J. Ch. 844; *Trethewy* v. *Helyar* (1876), 4 Ch. D. 53; 46 L. J. Ch. 125; Ad. of E. Act, 1925, s. 49 (b).

Gift to "representatives" or "legal representatives."

The term "representatives" or "legal representatives" means *primâ facie* "executors or administrators";(o) but the context frequently shows that it was the intention of the testator to use the term in a different sense,(p) *e.g.*, as meaning the persons entitled on an intestacy under the general law or the descendants of the legatees. Again, if personal estate is given immediately and without the intervention of any previous interests to A., or in case of his death to his "representatives" or "legal representatives," A. takes absolutely if he survives the testator, but if he dies in the testator's lifetime the property goes to the persons entitled to his personal estate on an intestacy under the general law, and not to his executors or administrators, on the ground of the improbability that the testator should mean the legacy to be thrown into the general assets of the legatee dying before him.(q)

Other Matters relating to Legacies.

Construction of gifts over on death of legatee, to what period death is to be referred.

When a gift of a legacy is followed by a gift over on the death of the legatee, the question arises whether the death referred to is a death at any time, or a death within a particular period.

In *Edwards* v. *E.* (1852), 15 Beav. 357; 21 L. J. Ch. 324, the cases on this subject were divided into four classes:—

(1) Where the gift is to A., and if he shall die to B.;

(2) A gift to A., and if he shall die without children to B.;

(3) To X. for life, with remainder to A., and if A. shall die to B.;

(4) To X. for life, with remainder to A., and if he shall die without children to B.

The court stated that, in the first class, the contingency is the death of A. in the testator's life; in the second, death at any time; and in the third and fourth, death before X.

But it has been decided by the House of Lords that the above rule is incorrect as regards the fourth class of cases, the death there being death at any time, as in the second.(r)

(o) *Hinchcliffe* v. *Westwood* (1848), 2 De G. & Sm. 216; 17 L. J. Ch. 167; *Re Crawford's Trusts* (1854), 2 Drew. 230; 23 L. J. Ch. 625; *Dixon* v. *D.* (1857), 24 Beav. 129; *Re Ware* (1890), 45 Ch. D. 269; 59 L. J. Ch. 717.

(p) *Smith* v. *Palmer* (1849), 7 Hare, 225; *King* v. *Cleaveland* (1859), 4 D. & J. 477; 28 L. J. Ch. 835; *Re Horner* (1888), 37 Ch. D. 695; 57 L. J. Ch. 211.

(q) *Bridge* v. *Abbott* (1791), 3 Bro. C. C. 224; *Cotton* v. *C.* (1839), 2 Beav. 67; 8 L. J. Ch. 349; *Re Thompson* (1886), 55 L. T. 85; *Re Crawford* (1854), 2 Drew. 230; 23 L. J. Ch. 625; see also *Re Gryll* (1868), L. R. 6 Eq. 589.

Lim. Act as to legacies.

An action to recover a legacy must be brought within twelve years after the right to receive it has accrued, unless the legacy is vested in the executor on an express trust.(s)

The right of a beneficiary to recover money paid by mistake to another beneficiary can be barred by the Lim. Act, 1623, where the claim is in the nature of a claim for money and not for a specific fund impressed with the trust.(t)

SECT. V.—*Lapse*.

If a devisee or legatee dies in the lifetime of the testator, the devise or bequest fails, or, as it is usually expressed, lapses, except in the cases provided for by the Wills Act.

Destination of the subject of lapsed gifts.

Before the Wills Act there was an important difference between real and personal estate. In the case of personal estate, the lapsed legacy fell into the residuary estate unless a contrary intention appeared by the Will; but where land was the subject of the lapsed gift, it went to the heir of the testator.

Under Wills Act lapsed interests in real estate go to residuary devisee.

Under s. 25 of the Wills Act real estate included in devises, which fail or are void, passes under the residuary devise in the Will, unless a contrary intention appears.

What devises are residuary so as to include the subject of lapsed gifts.

Whether a devise or bequest of real or personal estate is residuary, so as to include lapsed interests, depends upon the particular language used in each case. Words of exception will not of themselves prevent the gift from being residuary.(u)

The question is whether the property is excepted in order to take it away under all circumstances and for all purposes from the person to whom the residue is given, or whether (as is usual) it is excepted merely for the purpose of giving it to another person. If the latter, and the gift to the other person fails, the donees of all except this property are entitled to take the whole.(*v*)

(r) *O'Mahoney* v. *Burdett* and *Ingram* v. *Soutten* (1874), L. R. 7 H. L. 388, 408; 44 L. J. Ch. 55, 56; *Re Schnadhorst* [1902], 2 Ch. 234; 71 L. J. Ch. 454; Theobald, 7th ed., 660; but see *Olivant* v. *Wright* (1875), 1 Ch. D. 346; 45 L. J. Ch. 1, where the court thought that the testator showed a contrary intention; and *Re Poultney* (1912), 107 L. T. 1.

(s) R. P. Lim. Act, 1874, s. 8; *Re Davis* [1891], 3 Ch. 119; 61 L. J. Ch. 85; *Re Mackay* [1906], 1 Ch. 25; 75 L. J. Ch. 47; and see *Re Pardoe* [1906], 1 Ch. 265; 75 L. J. Ch. 161; reversed on another point [1906], 2 Ch. 340; 75 L. J. Ch. 748.

(t) *Re Robinson* [1911], 1 Ch. 502; 80 L. J. Ch. 381; *Re Croyden* (1911), 55 Sol. J. 632; but see *Re Blow* [1914], 1 Ch. 233; 83 L. J. Ch. 185; and *Re Richardson* [1920], 1 Ch. 423; 89 L. J. Ch. 258, in which *Re Croyden, supra*, was discussed but not followed.

(u) *Cogswell* v. *Armstrong* (1855), 2 K. & J. 227; *Bernard* v. *Minshull* (1859), Johns. 276; 28 L. J. Ch. 649; *Re Bagot* [1893], 3 Ch. 359; 62 L. J. Ch. 1006.

A devise of "the rest of my freehold lands" *in a particular parish* is not a residuary devise within the meaning of the Wills Act.(*w*) But a devise of "all the rest of my freeholds" to A. and "all the rest of my copyholds" to B., or of "all the rest of my freeholds" to A., omitting all reference to copyholds, is a good residuary devise: *Mason* v. *Ogden* [1903], A. C. 1; 72 L. J. Ch. 152.

Entailed interests. Children leaving issue.

Under s. 32 of the Wills Act, as extended to entailed personalty by L. P. Act, 1925, s. 130 (1), a devise or bequest of an "entailed interest" (*ib.*, sub-s. (7)), does not lapse if there are issue of the devisee or legatee inheritable under the entail living at the testator's death; and under s. 33 of the Wills Act there is no lapse of a devise or bequest to children or issue who leave issue living, including a child *en ventre sa mère*: *Re Griffiths* [1911], 1 Ch. 246; 80 L. J. Ch. 176, at the testator's death.

Effect of s. 33 of Wills Act.

Section 33 applies to appointments by Will under a general power: *Eccles* v. *Cheyne* (1856), 2 K. & J. 676, but not to appointments under a special power.(*x*) It also applies where the devisee or legatee is dead at the date of the Will: *Wisden* v. *W.* (1854), 2 S. & G. 396. It is not necessary, in order to prevent lapse, that the issue living at the death of the testator should have been living when the legatee died. Thus, where a legacy was given to a daughter who died before the testatrix, leaving one child who also died before the testatrix, leaving a child who survived the testatrix, the legacy did not lapse: *In b. Parker* (1862), 1 Sw. & Tr. 523; 31 L. J. P. 9.

Class gift

The section does not apply to gifts to a class,(*y*) even though in the events which happened the class consisted of one child only: *Re Harvey* [1893], 1 Ch. 567; 62 L. J. Ch. 328; nor does

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(*v*) *Bernard* v. *Minshull*, *supra;* see also *Cambridge* v. *Rous* (1802), 8 Ves. 12, 25; *Easum* v. *Appleford* (1840), 5 My. & Cr. at p. 61; 10 L. J. Ch. 81; *Evans* v. *Jones* (1846), 2 Coll. 516; *Re Fraser* [1904], 1 Ch. 726; 73 L. J. Ch. 481.

(*w*) *Springett* v. *Jenings* (1871), L. R. 6 Ch. 333; 40 L. J. Ch. 348.

(*x*) *Griffiths* v. *Gale* (1844), 12 Sim. 354; 13 L. J. Ch. 286; *Holyland* v. *Lewin* (1884), 26 Ch. D. 266; 53 L. J. Ch. 530.

(*y*) *Browne* v. *Hammond* (1858), John. 210; *Re Jackson* (1884), 25 Ch. D. 162; 53 L. J. Ch. 180.

Death duties.

it apply where the testator shows an intention that a gift should lapse: *Re Meredith* [1924], 2 Ch. 552. Nor does the section substitute for the deceased child the issue whose existence is the event or condition which prevents the lapse, but renders the subject of the gift the property of that child, and disposable by him. Thus, it will be bound by a contract for valuable consideration made by him while living, *e.g.*, on a sale or mortgage or by settlement on marriage, or will pass by his Will, or, if he dies intestate, to the person entitled under the general law, or to his trustee in bankruptcy if he dies while an undischarged bankrupt. It will be subject to death duties in like manner as if the child had in fact survived the testator and died immediately afterwards.(*z*)

No lapse on death of one of several joint tenants or of one of several members of a class.

A gift to several persons as joint tenants, or to a class of persons, does not come within the operation of the doctrine of lapse unless all such joint tenants, or all the members constituting the class, die before the testator, as the gift takes effect in favour of those who survive.(*a*) Where an estate is devised, subject to the payment of a sum thereout, the sum charged does not lapse by the death of the devisee of the estate in the testator's life: *Oke* v. *Heath* (1748), 1 Ves. Sen. 135. A gift to a class operates in favour of those capable of taking, to the exclusion of those who are incapable.(*b*)

Legacy with gift over on death before a given event.

Where a legacy is given to a person with a gift over if he dies before a given event, *e.g.*, before he attains twenty-one, and the legatee dies in the testator's lifetime, and *before* the given event, the bequest over will take effect; but if the legatee dies in the testator's lifetime *after* the given event, the legacy lapses.(*c*)

Legacy in discharge of obligation does not lapse.

A legacy given to a person, not merely as bounty, but in discharge of an obligation recognized by the testator, whether

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(*z*) *Johnson* v. *J.* (1843), 3 Hare, 157; 13 L. J. Ch. 79; *Re Hone's Trusts* (1883), 22 Ch. D. 663; 52 L. J. Ch. 295; *Re Scott* [1901], 1 K.B. 228; 70 L. J. K. B. 66; *Smith* v. *Pearson* [1920], 1 Ch. 247; 89 L. J. Ch. 123.

(*a*) Jarm. 6th ed., 431; *Leigh* v. *L.* (1854), 17 Beav. 605; 23 L. J. Ch. 287.

(*b*) *Re Coleman and Jarrom* (1876), 4 Ch. D. 165; 46 L. J. Ch. 33; *Young* v. *Davies* (1863), 2 Dr. & Sm. 167; 32 L. J. Ch. 372.

Vested reversion.

(*c*) *Walker* v. *Main* (1819), 1 J. & W. 1; *Humphreys* v. *Howes* (1830), 1 R. & M. 639; 8 L. J. (O. S.) Ch. 165; *Humberstone* v. *Stanton* (1813), 1 V. & B. 385. If a bequest of a sum is made to A. for life, with remainder to B., to be paid to him at twenty-one, with a gift over in case of his death before the same becomes payable, and B. attains twenty-one, and dies before A., the legacy passes to the representatives of B.: *Walker* v. *Main*, *supra*; *Jones* v. *J.* (1843), 13 Sim. 561; 13 L. J. Ch. 16; *Partridge* v. *Baylis* (1881), 17 Ch. D. 835.

legally enforceable or not, does not lapse by the legatee's death before the testator: *Stevens* v. *King* [1904], 2 Ch. 30; 73 L. J. Ch. 535.

A contingent gift may carry intermediate income.

A gift of personal estate on a contingency always carried with it the intermediate income unless a contrary intention was shown;(*d*) but a devise before 1926 of real estate did not; the intermediate rents went to the residuary devisee, and if there was no residuary devise, or if the devise in question was itself a residuary devise, to the heir.(*e*) Thus conditional devises were avoided and estates tail were limited in place thereof. There was no such objection to alternative limitations of the fee simple. If, however, there was a devise and bequest of real and personal estate as a mixed fund, and the testator showed an intention that the rule applicable to personal estate should apply also to the real estate, the intermediate rents followed the other income.(*f*)

Where the real and personal estate is made a mixed fund the rule as to personalty applies to the real estate also.

Devises, &c., after 1925, carry intermediate income.

Under L. P. Act, 1925, s. 175, contingent and future specific devises or bequests, contingent residuary devises and specific or residuary devises to trustees on trust for persons whose interests are contingent or executory will, subject to the statutory provisions as to accumulations (as to which see T. Act, 1925, s. 31, relating to minorities and contingent interests) carry the intermediate income so far as undisposed of: 1 Wolst. & Cherry, 11th ed., 435.

SECT. VI.—*For what period the vesting of property given by Will may be postponed or income may be accumulated, having regard to the rule against perpetuities and the statutory provisions as to accumulations.*

Old rule as to remainders and against perpetuities.

Before 1926 it was a rule of law that land could not be limited to an unborn person for life with remainder to the children of that unborn person.(*g*) This rule, as respects limitations coming

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(*d*) *Green* v. *Ekins* (1742), 2 Atk, 473; *Re Taylor* [1901], 2 Ch. 134; 70 L. J. Ch. 535.

(*e*) *Hopkins* v. *H.* (1734), Cas. temp. Talbot, 44; *Re Averill* [1898] 1 Ch. 523; 67 L. J. Ch. 233.

(*f*) *Genery* v. *Fitzgerald* (1822), Jac. 468; *Bective* v. *Hodgson* (1864), 10 H. L. C. 656; 33 L. J. Ch. 601; *Re Dumble* (1883), 23 Ch. D. 360; 52 L. J. Ch. 631; *Re Burton* [1892], 2 Ch. 38; 61 L. J. Ch. 702.

(*g*) *Duke of Marlborough* v. *Godolphin* (1759), 1 Eden, 404; see *Knapping* v. *Tomlinson* (1865), 34 L. J. Ch. 3. The rule was independent of the rule against perpetuities: *Whitby* v. *Mitchell* (1890), 44 Ch. D. 85; 59 L. J. Ch. 485; and applied to equitable interests as well as legal remainders: *Re Nash* [1910], 1 Ch. 1; 79 L. J. Ch. 1; but was subject to the *cy-près* doctrine:

into operation after 1925, has been abolished: L. P. Act, 1925, s. 161. It was also a rule of law that any limitation of land, whether by way of contingent remainder (*h*) or executory or springing use, except one following an estate tail, was void, unless the estate created by it would become absolutely vested within a life or lives in being and twenty-one years and, if existing, the period of gestation. This rule still remains good as respects equitable limitations. Thus, if lands were devised to A. in fee simple, with an executory devise over in case A. or any of his heirs should do a particular act, the devise over was void. But if lands are devised to A. in tail, with an executory devise over in case A., or the heirs of his body, shall do a particular act or make a default (*e.g.*, the breach of a name and arms clause), the executory devise is valid in equity, because A. being tenant in tail can at any time bar the entail and the executory devise, so that the property is not in fact tied up, hence the rule is not transgressed.(*i*)

Instances of application of rule to real estate.

Restrictions on executory limitations.

Under L. P. Act, 1925, s. 134, an executory limitation over of property (excluding a limitation over affecting an entailed interest) to take effect on default or failure of the donee's issue will become void if any of the issue attain twenty-one in the lifetime of the donee. This applies after 1881, but the operation of the section is extended where the instrument comes into force after 1925: 1 Wolst. & Cherry, 11th ed., 356–57.

Restrictions on perpetuity rule.

Again the perpetuity rule is restricted by L. P. Act, 1925, s. 162 (distress, indemnities, reservations, &c.), see also s. 121 (recovery of rentcharges) and s. 190 (8) (remedies on non-payment of rent or breach of covenants).

Validation of certain gifts.

Under s. 163 a gift or gift over void for remoteness, because the age of the donee or members of the class is fixed above twenty-one years, is validated by substituting the age of twenty-one for the age stated. This applies to deeds made after 1925, and to Wills coming into operation after 1925: 1 Wolst. & Cherry, 11th ed., 415–16.

Parfitt v. *Hember* (1867), L. R. 4 Eq. 443; *Re Park's Sett.* [1914], 1 Ch. 595; 83 L. J. Ch. 528; *cf. Re Bullock* [1915], 1 Ch. 493; *Re Clarke* [1916], 1 Ch. 467; 85 L. J. Ch. 592; *cf. Re Garnham* [1916], 2 Ch. 413; 85 L. J. Ch. 646.

(*h*) The rule against perpetuities applied to a legal contingent remainder: *Re Frost* (1890), 43 Ch. D. 246; 59 L. J. Ch. 118; *Re Ashforth* [1905], 1 Ch. 535; 74 L. J. Ch. 361; and to discretionary trusts, *Kennedy* v. *K.* [1914], A. C. 215; 83 L. J. P. C. 63.

(*i*) See Butler's note to Co. Litt. 271; see also *Heasman* v. *Pearse* (1872), L. R. 7 Ch. 275; 41 L. J. Ch. 705; *Re Haygarth* [1912], 1 Ch. 510; 81 L. J. Ch. 255.

Rule extends to personalty.

The rule against perpetuities is equally applicable to gifts of personal estate. It is therefore necessary, in framing all such gifts, to take care that the absolute vesting of them is not postponed beyond the period allowed, viz., a life or lives in being and twenty-one years afterwards, with a period of gestation, if existing.

Instances of application of rule.

Thus, if a legacy was given before 1926 in trust for A. for life, and after his death for all his children who attained twenty-two, the gift was void, because it was possible that A. might die leaving a child just born, and in such case nearly twenty-two years beyond the life of A. must or *might* elapse before the legacy became absolutely vested.(*j*) Such a gift made after 1925 is validated under s. 163 by reading " twenty-one " for " twenty-two." Again, under a devise to A., an unmarried woman, for life, then to her husband for life, then to the children living at the death of the survivor, the limitation to the children is void, because A. may leave a husband born after the testator's death.(*k*)

The rule does not extend to—

(1) provisions for payment of debts: *Marshall* v. *Holloway* (1818), 2 Swan. 432;

(2) immediate charitable gifts, though for objects not immediately effective; *Re Swain* [1905], 1 Ch. 669; 74 L. J. Ch. 354;

(3) gifts over from one charity to another: *Re Tyler* [1891], 3 Ch. 252; 60 L. J. Ch. 686.

Extent to which rule extends to referential trusts.

Also the rule does not extend to trusts declared by reference to an existing settlement, if at the date when the trusts are executed, the limitations of the referential settlement do not involve an infringement of the rule in respect of the execution of those trusts.(*l*)

Limitations expectant on void limitation or in default of appointment under void power.

All limitations ulterior to or expectant on one which is void for remoteness, are void also (*m*) unless validated under s. 163. But limitations in default of appointment under a power which is void are not void, unless they are themselves obnoxious to the

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(*j*) *Thomas* v. *Wilberforce* (1862), 31 Beav. 299; *Re Hume* [1912], 1 Ch. 693; 81 L. J. Ch. 382.

(*k*) *Re Frost* (1890), 43 Ch. D. 246; 59 L. J. Ch. 118; *cf. Re Bullock* [1915], 1 Ch. 493; *Re Garnham* [1916], 2 Ch. 413; 85 L. J. Ch. 646.

(*l*) *Re Fane* [1913], 1 Ch. 404; 82 L. J. Ch. 225; see also *Re Atkinson* [1916], 1 Ch. 91; 85 L. J. Ch. 159.

(*m*) Jarm., 6th ed., 350; *Re Hewett* [1915], 1 Ch. 810; 84 L. J. Ch. 715.

rule against perpetuities: *Re Abbott* [1893], 1 Ch. 54; 62 L. J. Ch. 46. Limitations void under the old law for remoteness may be followed by alternative and independent limitations, which are valid,(*n*) but in such cases the prior limitations, if made after 1925, will generally be validated by s. 163.

How rule to be applied, where Will exercises a special power, or a general power.

In exercising by Will special powers of appointment the rule in question must be applied as if the appointment were contained in the instrument creating the power: Farwell, Pow., 3rd ed., 325: *Re Davies and Kent* (see note). Nevertheless, under s. 163, an appointment made in exercise of a special power may be validated. A general power is equivalent to ownership, and time will be reckoned, in the case of the exercise of a general power, from the death of the donee of the power; this is so though the donee is a married woman, and the power is testamentary only: *Rous* v. *Jackson* (1885), 29 Ch. D. 521; 54 L. J. Ch. 732.

When trust for sale void, trusts of proceeds sometimes good.

A trust to sell at a time beyond the perpetuity limit is void, but if the proceeds are given to persons ascertainable within the perpetuity limit (if necessary, having regard to any variation in the trusts effected by s. 163), and the same persons take (either by express direction or by implication) the rents and profits until sale, they were, under the old law, entitled to the property as real estate.(*o*) The beneficiaries of the proceeds have been held to be so entitled, though the rents and profits until sale were given to different persons: *Re Daveron* [1893], 3 Ch. 421; 63 L. J. Ch. 54.

Effect of implied trusts for sale.

Though under L. P. Act, 1925, s. 23, a trust for sale, once validly created, is, in favour of a purchaser, deemed to be subsisting till the land is conveyed to the persons interested, this can make no difference to the beneficial interests. Again if, under the old law, the beneficiaries would have been entitled to the land "as real estate," it makes no difference that by reason of s. 3 (1) (ii), proviso, and s. 36 (joint tenancies), it has to be conveyed to them or to not more than four of them on trust for sale.

(*n*) *Monypenny* v. *Dering* (1852), 2 D. M. & G. 145; 22 L. J. Ch. 313; *Re Bowles* [1905], 1 Ch. 371; 74 L. J. Ch. 338; *Re Davies and Kent* [1910], 2 Ch. 35; 79 L. J. Ch. 689; and see *Re Norton* [1911], 2 Ch. 27; 80 L. J. Ch. 119; *Re Hewett* [1915], 1 Ch. 810; 84 L. J. Ch. 715.

(*o*) *Goodier* v. *Edmunds* [1893], 3 Ch. 455; 62 L. J. Ch. 649; and see also *Re Wood* [1894], 3 Ch. 381; 63 L. J. Ch. 790; *Re Appleby* [1903], 1 Ch. 565; 72 L. J. Ch. 332; *Re Bewick* [1911], 1 Ch. 116; 80 L. J. Ch. 47. Under the new law an immediate trust for sale would generally be implied.

Accumulation of Income.(*p*)

For what period income might have been accumulated before Act of 1800.

Previously to the passing of the Act of 1800, now repealed (L. P. Act, 1925, 7th Sch.) and reproduced, with amendments, by ss. 164–6 of the L. P. Act, 1925, the income of property might be directed to be accumulated for the whole period permitted by the rule against perpetuities, as was decided in *Thellusson* v. *Woodford* (1798), 4 Ves. 227; unless the purpose was to discharge debts, when the period is unlimited.

Accumulations beyond certain periods prohibited.

The accumulation of income is prohibited for any longer period (s. 164) than one of the following alternative periods, namely: (i) the life of the grantor or settlor; or (ii) a term of twenty-one years from the death of the grantor, settlor or testator; or (iii) during the minority of any person living or *en ventre sa mere* at the death of the grantor, settlor or testator; or (iv) during the minority only of any person who would, if of full age, be entitled, under the limitations of the instrument directing the accumulations, to the rents and profits directed to be accumulated.(*q*) But the section does not extend (sub-s. 2) to any provision for the payment of debts of any settlor, &c., or other person, or to any provision for raising portions for children or issue of the grantor, &c., or of a person taking any interest under the settlement, &c., or to whom any interest is thereby limited,(*r*) or to any directions respecting the produce of timber or wood.

Where accumulations are made during a minority under the statutory power (T. Act, 1925, s. 31), or under the general law, this is not to be treated as one of the authorised periods, hence an express trust for accumulation for one of the other four periods will be valid: *ib.*, s. 165.

No accumulation beyond minority for purchase of land.

Section 166 forbids accumulation for the purchase of land only for any longer period than during the minority or respective minorities of any person or persons, who, under the instrument directing the accumulation, would, for the time being, if of full age, be entitled to receive the income directed to be accumulated. This section does not prevent money being accumulated to be held as capital money for the purposes of the S. L. Act, 1925.

(*p*) See, generally, Theobald, 7th ed., 613, *et seq.*

(*q*) This fourth period is not confined to persons born in the testator's lifetime: *Re Cattell* [1914], 1 Ch. 177; 83 L. J. Ch. 322.

(*r*) *Re Stephens* [1904], 1 Ch. 322; 73 L. J. Ch. 3; *Colquhoun's Trustees* v. *C.* [1907], S. C. 346; *Mackay's Trustees* v. *M.* [1909], S. C. 139.

The effect of these three sections is fully discussed in 1 Wolst. and Cherry, 11th ed., 416–23, but the following points should be noted.

Direction to accumulate beyond the period allowed is good *pro tanto.*

If a testator directs income to be accumulated for a period exceeding the authorised period, the accumulation will be allowed *pro tanto,* and will be void only for the excess.(*s*)

Periods mentioned are alternative.

The periods mentioned in s. 164 are alternative, and not cumulative, save in the case covered by s. 165. Consequently a direction to accumulate during the life of the grantor and for some time afterwards ceases at his death, though twenty-one years have not then expired.(*t*)

Destination of income directed to be accumulated beyond period allowed.

The section merely makes void the direction to accumulate, it leaves the income to go to such person, &c., as would have been entitled thereto, if such accumulation had not been directed. Hence, where residue is given upon trust to accumulate the income for the life of A., or any other unauthorised period, such income will, after the expiration of the authorised period, and during the rest of the period of accumulation directed by the Will, go (unless otherwise disposed of) as undisposed of and be held for the new statutory next-of-kin under Ad. of E. Act, 1925.(*u*) Where a testator directed the rents of an estate to be accumulated until a certain sum was raised, and subject to such direction the estate was devised to several persons in succession, the direction to accumulate operated as a charge on the successive estates, and accumulations made after twenty-one years from the testator's death did not go as undisposed of, but went to the persons entitled to the rents and profits under the devise.(*v*)

An implied trust to accumulate surplus income of specifically devised freeholds.

Where an implied trust to accumulate the surplus income of freeholds specifically devised on trust for sale exceeded twenty-one years from the testator's death, it was held that the valid accumulations fell into residue as capital, but the invalid accumulations went to the tenant for life as income: *Re Garside* [1919], 1 Ch. 132; 88 L. J. Ch. 116.

(*s*) *Griffiths* v. *Vere* (1803), 9 Ves. 127; *Mathews* v. *Keble* (1868), L. R. 3 Ch. 691; 37 L. J. Ch. 657; see also *Re Lindsay* [1911], S. C. 584.

(*t*) *Re Rosslyn's Trust* (1848), 16 Sim. 391; 18 L. J. Ch. 98; *Jagger* v. *J.* (1884), 25 Ch. D. 729; 53 L. J. Ch. 201.

(*u*) *Eyre* v. *Marsden* (1838), 2 Keen, 564; 4 Myl. & Cr. 231; 7 L. J. Ch. 220; *Macdonald* v. *Bryce* (1838), 2 Keen, 276; 7 L. J. Ch. 173; *Talbot* v. *Jevers* (1875), L. R. 20 Eq. 255; 44 L. J. Ch. 646; *Weatherall* v. *Thornburgh* (1878), 8 Ch. D. 261; 47 L. J. Ch. 658; *Re Travis* [1900], 2 Ch. 541; 69 L. J. Ch. 663.

(*v*) *Re Clulow's Trust* (1859), 1 J. & H. 639; 28 L. J. Ch. 696; *cf. Re Deloitte* [1926], 1 Ch. 56.

What is a provision for raising portions within the exception in sub-s. (2).

Under s. 164 (2) the portions to be provided for may be portions given by the same instrument which contains the provision by way of accumulation, or by a former instrument.(*w*) Where the provision is for children or issue of any person other than the grantor, &c., the parent or ancestor formerly had to take some interest under the same instrument, but not necessarily an interest in the property directed to be accumulated.(*x*) Now it is not necessary that the parent or ancestor should actually take some interest, it is sufficient if some interest was limited to him.

Gift of accumulations to children, &c.

A direction to accumulate the income of a testator's residue or of a legacy, followed by a gift of that residue or legacy with the accumulations to the children or issue of a person taking an interest under the Will, is not a provision for raising portions for such children or issue within the meaning of the exception: *Re Elliott* [1918], 2 Ch. 150; 87 L. J. Ch. 449, unless it could be held, on the facts, that there was a beneficial limitation (not a mere pretence) in favour of the parent.

As to the validity of accumulations to pay debts.

A direction to accumulate rents and profits for an indefinite period for the purpose of paying debts, with a devise of the land (subject to such trust) in strict settlement, does not contravene the rule against perpetuities, because, so soon as the fee simple vests in possession under the limitations, the owner can put an end to the accumulations.(*y*) A trust of this nature is excepted by s. 164 (2) (i) from the restrictions on accumulations.

Rights of remainderman to enforce trust to accumulate.

If a creditor insists on and obtains payment at once out of the capital of the estate, under an order in an administration action or otherwise, the remainderman cannot require the accumulation to go on so as to recoup the capital out of the income of the remaining property. It is conceived that a provision expressly directing such recoupment would be void, not being an authorised object for accumulation,(*z*) if the trust exceeded the authorised period.

(*w*) *Barrington* v. *Liddell* (1852), 2 D. M. & G. 480; 22 L. J. Ch. 1.

(*x*) *Edwards* v. *Tuck* (1853), 3 D. M. & G. 40; 23 L. J. Ch. 204; *Bourne* v. *Buckton* (1851), 2 Sim. N. S. 91; 21 L. J. Ch. 193; *Drewett* v. *Pollard* (1859), 27 Beav. 196; *Mathews* v. *Keble* (1868), L. R. 3 Ch. 691; 37 L. J. Ch. 657.

Mortgagees treated as beneficiaries.

(*y*) *Bateman* v. *Hotchkin* (1847), 10 Beav. 426; 16 L. J. Ch. 514; but see *Re Fitzgerald's S.* (1888), 37 Ch. D. 18; 57 L. J. Ch. 594, where the court held that under a trust to accumulate an annual sum out of the rents, in order to pay off mortgages, the mortgagees were beneficiaries, and that the trust could not be put an end to by the owner of the estate, who had barred the entail and acquired the fee simple in possession, unless he paid off the debts.

(*z*) See next page.

Recoupment of capital.

The same principle would apply if a term were limited to trustees on trust, out of income, to discharge incumbrances. As and when parts of the mortgaged properties were sold and the proceeds applied towards discharging incumbrances the effect would be to accelerate the cesser of the term.(*a*)

What is a provision for payment of debts within the section.

A contingent liability under a covenant entered into by the testator is a debt within sub-s. (2). It may be provided for by a direction to create a sinking fund without any reference to any authorised period of accumulation.(*b*)

Accumulation for improving land, &c.

A direction to apply income for the purpose of improving land, or for the repair of buildings, is not an authorised purpose,(*c*) nor is a direction to pay out of income the premiums on a policy of assurance effected by the testator on the life of another, nor a direction out of the rents of leaseholds to keep up a policy to replace at the end of the term the capital that would be lost by not selling the property,(*d*) nor to provide a fund for payment of dilapidations at the end of a lease: *Re Hurlbatt* [1910], 2 Ch. 553; 80 L. J. Ch. 29.

Simple interest.

Semble, a direction to invest the income without investing the resulting income from the fund so formed is a trust for accumulation.(*e*)

When legatee may put an end to accumulation.

If a vested interest is given to a person with a direction that the enjoyment shall be postponed until a future day, and that in the meantime the income shall be accumulated for the benefit of the legatee, the legatee may, if of full age, put an end to the accumulation, hence it is not void: *Re Trevanion* [1910], 2 Ch. 538; 80 L. J. Ch. 93. This principle applies equally where the legacy is to a charity.(*f*)

(*z*) *Tewart* v. *Lawson* (1874), L. R. 18 Eq. 490; 43 L. J. Ch. 673; *Norton* v. *Johnstone* (1885), 30 Ch. D. 649; 55 L. J. Ch. 222; *Re Heathcote* [1904], 1 Ch. 826; 75 L. J. Ch. 543; and *cf*. *Re Cresswell* (1913), 57 Sol. J. 578; on appeal (1914), 58 Sol. J. 360.

(*a*) *Re Earl of Stamford & Warrington* [1925], Ch. 589; 94 L. J. Ch. 294.

(*b*) *Varlo* v. *Faden* (1859), 1 D. F. & J. 211; 29 L. J. Ch. 230; *Re Hurlbatt* [1910], 2 Ch. 553; 80 L. J. Ch. 29.

(*c*) *Vine* v. *Raleigh* [1891], 2 Ch. 13; 60 L. J. Ch. 675; *Re Mason* [1891], 3 Ch. 467; 61 L. J. Ch. 25.

(*d*) *Bassil* v. *Lister* (1851), 9 Hare, 177; 20 L. J. Ch. 641; *Re Gardiner* [1901], 1 Ch. 697; 70 L. J. Ch. 407; Jarman, 6th ed., 391.

(*e*) *Crawley* v. *C.* (1835), 7 Sim. 427; *Re Clutterbuck* [1901], 2 Ch. 285; *Re Hawkins* [1916], 2 Ch. 570, 577; *Re Garside* [1919], 1 Ch. 132, 137; per contra *Re Pope* [1901], 1 Ch. 64, 69; 70 L. J. Ch. 26.

(*f*) *Saunders* v. *Vautier* (1841), Cr. & Ph. 240; 10 L. J. Ch. 354; *Wharton* v. *Masterman* [1895], A. C. 186; 64 L. J. Ch. 369; *Re Couturier* [1907], 1 Ch. 470; 76 L. J. Ch. 296.

A trust to accumulate for the purchase of real estate is a direction to accumulate "for the purchase of land only" within s. 166: *Re Clutterbuck* [1901], 2 Ch. 285; 70 L. J. Ch. 614; but a direction to apply the accumulations as capital money under the S. L. Act is not within that section: confirming *Re Danson* [1895], W. N. 102. As under S. L. Act, 1925, s. 81, money which, otherwise than under that Act, ought, as between the persons interested in the settled land, to be treated as capital, is, without prejudice to any other statutory provisions affecting it, to be deemed capital money, to be paid to the trustees of the settlement and to be invested or applied accordingly, very few cases can come within the restrictions of s. 166. That section applies to a Will made before, and coming into operation after, 27th June, 1892: *Re Llanover* [1903], 2 Ch. 330; 72 L. J. Ch. 729. The restrictions against accumulations apply to charities: *Martin* v. *Maugham* (1844), 14 Sim. 230; 13 L. J. Ch. 392.

Trust to purchase land.

Capital money.

Accumulation provisions apply to charities.

Sect. VII.—*Gifts to charities.*(g)

Act of 1888, rendering void dispositions of land by Will for charitable purposes, repealed *pro tanto* by Act of 1891.

The Mortmain and Charitable Uses Act, 1888 (which was in effect a re-enactment and consolidation of previous Acts, and in particular of 9 Geo. 2, c. 36), rendered void dispositions by Will of land, or of any interest in land, or of money to be laid out in the purchase of land, for charitable purposes, subject to certain exceptions.

But by the Mortmain, &c., Act, 1891, any property, whether real or personal, may be given by Will for any charitable use, subject, as regards gifts of land or of personal estate to be laid out in the purchase of land, to the following provisions:—

Real or personal property may now be left by Will for charitable purposes.

Under s. 5, land assured by Will to or for the benefit of any charitable use must be sold within one year from the death of the testator, or such extended period (see *Re Sidebottom* [1901], 2 Ch. 1; 70 L. J. Ch. 448), as may be allowed by the court or the Charity Commissioners. As soon as the time limited for the sale of any lands expires, the land unsold vests in the Official Trustee of Charitable Lands, and the Charity Commissioners must take all necessary steps for the sale or completion of the sale of such land. Personal estate by Will directed to be laid out in the purchase of land to or for the benefit of any charitable uses (h) is to be held to or for the benefit of the charitable uses as though there had been no such direction. But if the court or Charity Commissioners are satisfied that the land assured by Will or proposed to be purchased is required for actual occupation for the purposes of the charity and not as an investment, they may authorise the retention or acquisition of such land. This Act only applies to the Will of a testator dying after 5th August, 1891.(*i*)

(g) See generally, Tudor's Charitable Trusts, 4th ed.

(h) These words mean the same thing as "purposes of the charity": *Re Sutton* [1901], 2 Ch. 640; 70 L. J. Ch. 747.

"Charitable uses."

Effect of s. 10 of Act of 1891.

Section 10 enables land devised to a charity to be retained, without the necessity of obtaining an order for retention, whenever the devise is one which, independently of the Act of 1891, would be valid under the exemptions contained in ss. 6, 7, and 8 of the Act of 1888. Thus, land not exceeding five acres, or personal estate not exceeding £500 in value, may be given under 43 Geo. 3, c. 108, s. 1, for a church or chapel, or a house for the residence of the officiating minister, or a churchyard, or glebe, provided the Will be executed at least three months before the testator's death.(*j*) Under s. 6 of the Act of 1888, a limited quantity of land may be given by Will for a public park, public museum or elementary school, provided that the Will be executed at least twelve months before the death of the testator and enrolled in the books of the Charity Commissioners within six months after such death: *Re Sutton* [1901], 2 Ch. 640; 70 L. J. Ch. 747. Compare S. L. Act, 1925, s. 29 (4), requiring assurances to be recorded with the Commissioners in place of enrolment at the Central Office.

Church; residence; glebe, &c.

Park; museum; school.

Other statutory exemptions.

Under the Working Classes Dwellings Act, 1890, and the Technical and Industrial Institutions Act, 1892 (see *Re Stanley* (1910), 26 T. L. R. 365), a limited quantity of land may be given by Will for the purposes of those Acts. Land so given need not be sold under the Act of 1891, but the Will or probate must be enrolled in the books of the Charity Commissioners.

Under the Ed. Act, 1921, s. 117, any quantity of land may be given for educational purposes, but the disposition must be recorded with the Board of Education.

Trust for sale.

Land devised on trust for sale, the proceeds to go to a charity, may be retained unsold beyond the year but not indefinitely.(*k*) But, in favour of a purchaser, the trust for sale may be treated as valid whenever executed: L. P. Act, 1925, s. 23; an indefinite power to postpone sale is implied: *ib.*, s. 25.

Where a testator died after the passing of the Act of 1891, having, by a Will made before the Act, given "such part of my

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(*i*) Charitable gifts contained in the Wills of testators who died before this date are subject to the old law, under which not only a devise of land, but a gift of impure personalty, was void.

(*j*) *Re Vaughan* (1886), 33 Ch. D. 187; and see *Re Douglas* [1905], 1 Ch. 279.

(*k*) *Re Wilkinson* [1902], 1 Ch. 841; 71 L. J. Ch. 663, n; *Re Sidebottom* [1902], 2 Ch. 389; 71 L. J. Ch. 662; *Re Ryland* [1903], 1 Ch. 467; 72 L. J. Ch. 277; Tudor's Charitable Trusts, 4th ed., 486.

residuary estate as may by law be given for charitable purposes" to a charity, and the rest to A., it was held that the charity took the whole.(*l*)

Gift of mortgage debts on property abroad.

A gift for charitable purposes of mortgage debts on property abroad by a testator domiciled in England is invalid if gifts for such purposes of interests in land are forbidden by the local law: *Re Hoyles* [1911], 1 Ch. 179; 80 L. J. Ch. 274.

Gift to a charity not obnoxious to rule against perpetuities.

A gift for charitable purposes is not obnoxious to the rule against perpetuities though the trust may last for an indefinite period.(*m*)

What is a charitable gift.

Gifts for benevolent or philanthropic purposes are not necessarily charitable.(*n*) To be valid as a charitable gift, the gift must be for the public benefit, and the trust must be capable of being administered and controlled by the court. It is for the court to decide, in each case, whether a gift complies with these conditions. This decision will be made solely on the evidence before the court, it does not depend upon the opinion of the donor.(*o*)

Gift for "private charity," or for religious purposes not connected with edification of the public, not recognised.

A gift of money to be spent in "private charity" is not a charitable gift; (*p*) and as regards gifts for the maintenance of religious services, those services must be such as tend directly or indirectly to the instruction or edification of the public.(*q*)

A gift to a religious community of persons who spend their lives in celibacy for the purpose of sanctifying their souls by prayer and pious contemplation has been held not to be charitable: *Cocks* v. *Manners* (1871), L. R. 12 Eq. 574; 40

(*l*) *Re Bridger* [1894], 1 Ch. 297; 63 L. J. Ch. 186; *Re Crossley* [1897], 1 Ch. 928; 68 L. J. Ch. 558; *Re Bennett* [1920], 1 Ch. 305; 89 L. J. Ch. 269; and see *Re Harris* [1912], 2 Ch. 241; 81 L. J. Ch. 512.

Option to purchase.

(*m*) *Re Swain* [1905], 1 Ch. 669; 74 L. J. Ch. 354; and *cf. Worthing Corporation* v. *Heather* [1906], 2 Ch. 532; 75 L. J. Ch. 761, where an option to purchase, void for remoteness, was not cured by the fact that it was given for charitable purposes.

(*n*) *Morice* v. *Bp. of Durham* (1805), 10 Ves. at p. 532; *Re Macduff* [1896], 2 Ch. 451; 65 L. J. Ch. 700; *Re Allen* [1905], 2 Ch. 400; 74 L. J. Ch. 593; *Mackinnon's Trustees* v. *M.* [1909], S. C. 1041; *M'Conochie's Trustees* v. *M.*, *ib.*, 1046; *Re Da Costa* [1912], 1 Ch. 337; *Re Clarke* [1923], 2 Ch. 407; 92 L. J. Ch. 629; *Re Ludlow* (1923), W. N. 314.

(*o*) *Re Hummeltenberg* [1923], 1 Ch. 237; 92 L. J. Ch. 326; see also *Income Tax Commrs.* v. *Pemsel* [1891], A. C. 531; 61 L. J. Q. B. 265.

(*p*) *Ommanney* v. *Butcher* (1823), T. & R. 260; but see *Re Sinclair* (1884), 13 L. R. Ir. 150.

(*q*) See *Re Davidson* [1909], 1 Ch. 567; 78 L. J. Ch. 437; *Re Salter* [1911], 1 Ir. R. 289; *Dunne* v. *Byrne* [1912], A. C. 407; 81 L. J. P. C. 202; *A.-G.* v. *Pelly* (1912), 56 Sol. J. 241.

L. J. Ch. 640. If, however, the community also nurses the sick, the gift is charitable.(*r*)

Gift to poor.

Regimental mess.

A gift to "the poor and the service of God": *Re Darling* [1896], 1 Ch. 50; 65 L. J. Ch. 62, is a valid charitable gift, and so is a gift to a society "for the suppression of vivisection": *Re Foveaux* [1895], 2 Ch. 501; 64 L. J. Ch. 856; or to the mess of a regiment,(*s*) or for promotion of sport in a regiment: *Re Gray* [1925], Ch. 362; 94 L. J. Ch. 430; but a gift "for or towards the purchase of advowsons or presentations,"(*t*) or for restocking a river: *Re Clifford* [1912], 1 Ch. 29; 81 L. J. Ch. 220, is not a good charitable bequest.

Gift for perpetual repair of tomb in a church good, *secus* if tomb in churchyard.

A trust to repair a church or a monument in a church, being an ornament of the building,(*u*) or erect a stained glass window in a church: *Re King* [1923], 1 Ch. 243, or to repair any part of the fabric of a church, or to repair a parsonage house: *A.-G.* v. *Bp. of Chester* (1785), 1 Bro. C. C. 444, or a churchyard: *Re Vaughan* (1886), 33 Ch. D. 187, is a good charitable trust; but a trust to repair a particular tomb in a churchyard is not charitable; if the trust is to last for an indefinite period, the gift is void as creating a perpetuity.(*v*)

Condition for transfer of fund from one charity to another, if tomb not kept up, valid.

Where a fund was given to a charity, on condition that the trustees of the charity should keep in repair a family vault, with a gift over to another charity on the trustees failing to do so, it was held that the gift over was valid, on the principle that the rule against perpetuities has no application to a transfer, in a certain event, of property from one charity to another.(*w*) The principle will not be extended.(*x*)

Gift to institution not charitable, when valid.

A gift to a perpetual institution not charitable is valid, unless the legacy is made subject to some trust which will prevent the

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(*r*) *Re Delany* [1902], 2 Ch. 642; 71 L. J. Ch. 811; and see *Re Webster* [1912], 1 Ch. 106; 81 L. J. Ch. 79.

(*s*) *Re Good* [1905], 2 Ch. 60; 74 L. J. Ch. 512; *Re Donald* [1909], 2 Ch. 410; 78 L. J. Ch. 761.

(*t*) *Re Hunter* [1899], A. C. 309; 68 L. J. Ch. 449; see *Re Church Patronage Trust* [1904], 2 Ch. 643; 73 L. J. Ch. 712.

(*u*) *Hoare* v. *Osborne* (1866), L. R. 1 Eq. 585; 35 L. J. Ch. 345; and see *Re Pardoe* [1906], 2 Ch. 184; 75 L. J. Ch. 455; *Re Barker* (1909), 25 T. L. R. 753.

(*v*) *Lloyd* v. *L.* (1852), 2 Sim. N. S. 255; 21 L. J. Ch. 596; *Hoare* v. *Osborne*, *supra*.

(*w*) *Re Tyler* [1891], 3 Ch. 252; 60 L. J. Ch. 686; *Re Davies* [1915], 1 Ch. 543; 84 L. J. Ch. 493.

(*x*) *Re Bowen* [1893], 2 Ch. 491; 62 L. J. Ch. 681; *Re Lord Stratheden and Campbell* [1894], 3 Ch. 265; 63 L. J. Ch. 872; *Re Peel* [1921], 2 Ch. 218; 90 L. J. Ch. 369.

existing members of the association from spending it as they please: *Re Clarke* [1901], 2 Ch. 110; 70 L. J. Ch. 631. Livery companies of the City of London are not necessarily "charities" in the legal sense: *Re Meech* [1910], 1 Ch. 426; 79 L. J. Ch. 209.

Cy-près doctrine.

If a testator shows a general intention in favour of charity, but the objects are not specifically defined, or the defined objects fail,(*y*) the court will carry out the general intention *cy-près* by means of a scheme if trustees of the fund have been appointed. Where the money given exceeds the amount required to effect the desired purpose the court will apply the surplus *cy-près*.(*z*)

Crown's rights.

If no trust has been interposed, the disposition of the gift is in the King by sign manual.(*a*) Where a legacy was given "to the following religious institutions, viz.," and a blank was left for them, this was held to be a charitable gift for the purpose of this doctrine, notwithstanding that there may be a religious gift which is not charitable.(*b*) Where a blank was left for the amount of the charitable legacy, the gift was void: *Hartshorne* v. *Nicholson* (1858), 26 Beav. 58; 27 L. J. Ch. 810.

Parol evidence as to purposes of gift.

Where a legacy was given to C. "for the charitable purposes agreed on between us," evidence was admitted to show what the purposes were: *Re Huxtable* [1902], 2 Ch. 793; 71 L. J. Ch. 876.

Lapse by failure of object in testator's lifetime.

Cy-près doctrine applies, if object fails afterwards.

A legacy to a particular institution which ceases to exist in the testator's lifetime lapses.(*c*) If the institution comes to an end after the testator's death,(*d*) or if there is a gift to an institution which never existed,(*e*) a general charitable intention may be inferred, and the legacy will be applied *cy-près*. An institution inaccurately but sufficiently described may be entitled to receive the legacy: *Re Magrath* [1913], 2 Ch. 331; 82 L. J. Ch. 532.

(*y*) *Re Webster* [1912], 1 Ch. 106; 81 L. J. Ch. 79; but *cf. Re Wilson* [1913], 1 Ch. 314; 82 L. J. Ch. 161; *Re Robinson* [1923], 2 Ch. 332; 92 L. J. Ch. 340.

(*z*) *Re King* [1923], 1 Ch. 243; 92 L. J. Ch. 292; *Re Stanford* [1924], 1 Ch. 73; 93 L. J. Ch. 109.

(*a*) *Moggridge* v. *Thackwell* (1802), 7 Ves. 36; *Re Pyne* [1903], 1 Ch. 83; 72 L. J. Ch. 72; and *cf. Re Friends' Free School* [1909], 2 Ch. 675; 79 L. J. Ch. 5, where there was a trust for "civil or religious" purposes.

(*b*) *Re White* [1893], 2 Ch. 41; 62 L. J. Ch. 342; but see *Grimond* v. *G.* [1905], A. C. 124; 74 L. J. P. C. 35; *Macduff* v. *Spence's Trustees* [1909], S. C. 178; *Paterson's Trustees* v. *P.*, *ib.*, 485.

(*c*) *Re Ovey* (1885), 29 Ch. D. 560; 54 L. J. Ch. 752; *Re Rymer* [1895], 1 Ch. 19; 64 L. J. Ch. 86; *Re Buck* [1896], 2 Ch. 727; 65 L. J. Ch. 881; *Re Waring* [1907], 1 Ch. 166; 76 L. J. Ch. 49; and *cf. Re Marchant* (1910), 54 Sol. J. 425, where the institution amalgamated with another.

(*d*) *Re Slevin* [1891], 2 Ch. 236; 60 L. J. Ch. 439; *Re Geikie* (1911), 27 T. L. R. 484; and see *Re Faraker* [1912], 2 Ch. 488; 81 L. J. Ch. 635.

(*e*) *Re Davis* [1902], 1 Ch. 876; 71 L. J. Ch. 459; and see *Re Bateman* (1911), 27 T. L. R. 313.

Charitable funds may be invested in real securities.

Trustees of charitable funds may invest on real securities, but where the right of redemption in the property comprised in any such security becomes liable to foreclosure, the property must be sold: The Charitable Funds Investment Act, 1870.

SECT. VIII.—*The rights of tenant for life and remainderman and the duties of trustees as regards property given in trust for persons in succession.*

Rule as to conversion with regard to perishable and reversionary property.

Where a testator gives his residuary personal estate to trustees in trust for A. for life, with remainders over, the trustees are bound to convert into money all property of a perishable or wasting nature and to invest the proceeds in authorised securities, unless the Will shows a contrary intention.(*f*) The rule in *Howe* v. *E. of Dartmouth* does not apply to leaseholds where there is a trust for sale: L. P. Act, 1925, s. 28 (2); *Re Brooker* (1926), 70 Sol. J. 526. As to intestacies: Ad. of E. Act, 1925, s. 33 (5).

Instances where it has been held that leaseholds, &c., shall be enjoyed *in specie*.

A trust to sell the property on the death of the tenant for life: *Alcock* v. *Sloper* (1833), 2 M. & K. 699, or only in a given event: *Daniel* v. *Warren* (1843), 2 Y. & C. C. C. 290; a direction not to sell without the consent of all parties; (*g*) and a power for trustees to retain any portion of the testator's property in the same state in which the same shall be at his death,(*h*) show a contrary intention. A discretionary power of sale given to trustees is inconsistent with an immediate sale. After 1925, there will, as respects land, generally be an implied trust for sale.

Reversions.

If the discretionary power is not in fact exercised, reversionary property must be apportioned between tenant for life and remainderman.(*i*)

Specific description.

Where specific items of property have been combined with the general words of a residuary gift, or have been pointed to specifically in the gift over, an intention to exclude the rule has been inferred as to the property so specified.(*j*)

(*f*) *Howe* v. *E. of Dartmouth* (1802), 7 Ves. 137; *Macdonald* v. *Irvine* (1878), 8 Ch. D. 101; 47 L. J. Ch. 494; and see 1 Wh. & T., 8th ed., p. 68; *Re Evans* [1921], 2 Ch. 309; 91 L. J. Ch. 29; *Re Rogers* [1915], 2 Ch. 437; 84 L. J. Ch. 837.

(*g*) *Hinves* v. *H.* (1844), 3 Hare, 609; see also *Burton* v. *Mount* (1848), 2 De G. & Sm. 383.

(*h*) *Gray* v. *Siggers* (1880), 15 Ch. D. 74; 49 L. J. Ch. 819; *Re Wilson* [1907], 1 Ch. 394; 76 L. J. Ch. 210; *Re Nicholson* [1909], 2 Ch. 111; 78 L. J. Ch. 516.

(*i*) *Re Pitcairn* [1896], 2 Ch. 199; 65 L. J. Ch. 120; *Re Rowlls* [1900], 2 Ch. 107; 69 L. J. Ch. 562; *Re Bentham* (1906), 94 L. T. 307.

(*j*) *Bethune* v. *Kennedy* (1835), 1 M. & C. 114; *Vaughan* v. *Buck* (1841), 1

Trust of *rents* for tenant for life, whether sufficient to entitle him to enjoy *in specie*.

A trust to pay the rents, profits, and income of the residuary property to a tenant for life was not of itself sufficient evidence of intention that leasehold property should be enjoyed *in specie* where the testator had freehold as well as leasehold property.(*k*) Whether it was so where the testator had no freeholds is not clear.(*l*)

Liability of representatives who neglect to convert.

Personal representatives are allowed a year from the testator's death for realising his property, and the conversion of such part as ought to be converted, compare Ad. of E. Act, 1925, s. 44, but they have a power to postpone conversion: *ib.*, s. 33; L. P. Act, 1925, ss. 25, 33. If they neglected this duty they were liable for any loss which arose.(*m*)

Mode of adjusting accounts between tenant for life and remainderman.

As between tenant for life and remainderman, where there is no right to specific enjoyment, the tenant for life is entitled, as from the day of the testator's death, to the whole income derived from such part of the testator's estate as is properly invested.(*n*)

Unauthorised investments.

As to such part as consists of unauthorised investments, he is entitled to an annual sum equal to the interest of so much Consols as would have been purchased with the unconverted property if such conversion had been made at the end of the year, and the excess of income accruing from the unconverted property is to be deemed capital.(*o*)

Instalments of purchase-money.

Where the purchase-money is paid by instalments, each instalment must be apportioned between tenant for life and remainderman. The tenant for life is entitled to so much as is attributable to income and the interest on the portion attributable to capital: *Re Hollebone* [1919], 2 Ch. 93; 88 L. J. Ch. 386.

Power to retain unauthorised investments.

If the Will empowers the trustees to postpone the conversion of existing investments, but says nothing as to the application of the income thereof while retained, unauthorised investments should be valued at the end of the year, and the tenant for life will be entitled as from the death of the testator to interest at 4 per cent.

Ph. 75; *Bowden* v. *B.* (1849), 17 Sim. 65; *Collins* v. *C.* (1833), 2 M. & K. 703; *Harris* v. *Poyner* (1852), 1 Drew. 174; 21 L. J. Ch. 915; *Re Barratt* [1925], Ch. 550; 94 L. J. Ch. 345.

(*k*) *Re Game* [1897], 1 Ch. 881; 66 L. J. Ch. 505; *Re Wareham* [1912], 2 Ch. 312; 81 L. J. Ch. 578.

(*l*) *Goodenough* v. *Tremamondo* (1840), 2 Beav. 512; *Pickup* v. *Atkinson* (1846), 4 Hare, 624; 15 L. J. Ch. 213.

(*m*) *Bate* v. *Hooper* (1855), 5 D. M. & G. 338.

(*n*) *Angerstein* v. *Martin* (1823), T. & R. 232; 2 L. J. (O. S.) Ch. 88; *Hewitt* v. *Morris* (1824). T. & R. 241; 2 L. J. (O. S.) Ch. 87; *Taylor* v. *Clark* (1841), 1 Hare, 161; 11 L. J. Ch. 189.

(*o*) *Dimes* v. *Scott* (1828), 4 Russ. 195; *Taylor* v. *Clark, supra*; *Brown* v. *Gellatly* (1867), L. R. 2 Ch. 751.

on the value thereof, and the excess of income will be capital: *Re Beech* [1920], 1 Ch. 40; 89 L. J. Ch. 9. After 1925 a power to retain or sell land is construed as a trust for sale with power to postpone: L. P. Act, 1925, s. 25 (4). After 1911, in the case of a personalty settlement or Will, the tenant for life of the proceeds of land is given a right to the income till sale: *ib.*, s. 32; the power to postpone given by s. 25 applies. As to intestacies: Ad. of E. Act, 1925, s. 33.

Principle of apportionment as regards property falling in some time after death.

Where the residuary estate includes outstanding personal estate, *e.g.*, a mortgage debt with arrears of interest, or reversionary property which cannot conveniently be sold, such outstanding personal estate will, on its falling into possession, be apportioned between tenant for life and remainderman by ascertaining what sum put out at interest on the day of the testator's death, and calculated with yearly rests and deducting income-tax, would, with the accumulations of interest, have produced at the day of receipt the amount actually received, and the sum so ascertained will be treated as capital, and the residue as income.(*p*)

Property retained at a loss.

If there is property which it is desirable to retain for a time at an annual loss, such loss should be apportioned between capital and income on the same principle: *Re Hengler* [1893], 1 Ch. 586; 62 L. J. Ch. 383.

Salvage costs.

Payments for the preservation of part of the testator's property, the benefit of which goes to capital, should be made out of capital: *Re Sherry* [1913], 2 Ch. 508; 83 L. J. Ch. 126.

Tenant for life not entitled to interim income of funds applied in payment of legacies.

The tenant for life of a residue is entitled to the income of such residue only, and not to the income which may accrue on such part of the testator's estate as is applied in payment of legacies during the period which may intervene between the death of the testator and the actual payment of such legacies: *Holgate* v. *Jennings* (1857), 24 Beav. 623.

Assets for payment of debts and legacies. *Allhusen* v. *Whittell.*

Where a testator bequeaths legacies, and gives his residue to a tenant for life, with remainders over, executors will be treated by the court, in adjusting accounts between the tenant for life and remainderman, as having paid the debts and legacies not out of capital only, but with such portion of the capital as

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(*p*) *Re Chesterfield's Trusts* (1883), 24 Ch. D. 643; 52 L. J. Ch. 958; *Re Godden* [1893], 1 Ch. 292; 62 L. J. Ch. 469; *Re Goodenough* [1895], 2 Ch. 537; 65 L. J. Ch. 71; *Re Rowlls* [1900], 2 Ch. 107; 69 L. J. Ch. 562; *Re Woods* [1904], 2 Ch. 4; 73 L. J. Ch. 204; *Re Beech* [1920], 1 Ch. 40; 89 L. J. Ch. 9; and *cf. Re Coaks* [1911], 1 Ch. 171; 80 L. J. Ch. 136.

together with the income of that portion for one year was sufficient for the purpose.(q)

This principle is not limited to payments made during the first year after the testator's death: *Re Wills* [1915], 1 Ch. 769; 84 L. J. Ch. 580. The rule in *Allhusen* v. *Whittell* is not excluded by a direction that no part of income shall be added to capital, but it must not be slavishly followed where it is inapplicable to the special circumstances of any particular case or where it would create unnecessary complication: *Re McEuen* [1913], 2 Ch. 704; 83 L. J. Ch. 66.

Carrying on business.

Under a power to postpone conversion executors may carry on a testator's business, and the profits arising therefrom will belong to the tenant for life as income.(r)

Destination of money arising from land directed to be sold, and *vice versa.*

If real estate is directed to be sold, and the proceeds of sale are absolutely bequeathed, the property from that time acquires the character of personalty. In the event of the death of the beneficiary before a sale the proceeds would belong to his personal representatives. Again, money directed to be laid out in the purchase of land from the creation of the trust assumes the character of real estate, and devolves as such on the representatives of the beneficiary, whether he dies before or after the conversion.(s) This doctrine of implied conversion is of less importance now that under Ad. of E. Act, 1925, s. 46, the question whether property is real or personal can make little or no difference to its destination on an intestacy, save in the case of a lunatic living and of full age on 1st January, 1926: *ib.*, s. 51 (2).

Election to take estate unconverted.

At any time before the conversion, a sole beneficiary, if *sui juris* and absolutely entitled, may elect to take the property directed to be converted in its actual state; and such election will be

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(q) *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295; 36 L. J. Ch. 929; *Lambert* v. *L.* (1873), L. R. 16 Eq. 320; 43 L. J. Ch. 106 (the rule established in the first case applied to real estate); *Marshall* v. *Crowther* (1874), 2 Ch. D. 199; see, too, *Re Poyser* [1910], 2 Ch. 444; 79 L. J. Ch. 748; *Re McEuen* [1913], 2 Ch. 704; 83 L. J. Ch. 66.

(r) *Re Chancellor* (1884), 26 Ch. D. 42; 53 L. J. Ch. 443; *Re Crowther* [1895], 2 Ch. 56; 64 L. J. Ch. 537; *Re Elford* [1910], 1 Ch. 814; 79 L. J. Ch. 385; but see *Re Smith* [1896], 1 Ch. 171; 65 L. J. Ch. 269, where it was held that the business must not be carried on for an indefinite time. See also Theobald, 7th ed., 457; *Re Oxley* [1914], 1 Ch. 604; 83 L. J. Ch. 442; *Re East* (1914), W. N. 187; *Re Healy* [1918], 1 Ir. R. 366.

(s) *Fletcher* v. *Ashburner* (1779), 1 Bro. C. C. 497; 1 Wh. & T., 8th ed., 347, and cases there cited; *Re Dyson* [1910], 1 Ch. 750; 79 L. J. Ch. 433.

Partition by trustees for sale.

Duration of of trusts for sale.

implied from his acts.(*t*) The beneficiaries, if more than one, must all be *sui juris* and absolutely entitled. Even then they may only require the land to be conveyed to not more than four of them on trust for sale: L. P. Act, 1925, ss. 3 (1) (ii), proviso, 36; T. Act, 1925, s. 34 (2). But a partition can be effected by trustees for sale when the shares have become absolutely vested: L. P. Act, 1925, s. 28 (3) (4) (5). A trust for sale of land will, in favour of a purchaser, remain on foot till the land is conveyed to or by the direction of the persons interested: *ib.*, s. 23. This does not prevent a surviving trustee for sale solely interested from dealing with the land as if there were no trust for sale: L. P. (Amend.) Act, 1926 (amending L. P. Act, 1925, s. 36). Nor does it free trustees for sale from the obligation to give effect to the directions of the persons interested in the proceeds of sale: L. P. Act, 1925, ss. 3, 26 (3), as amended.

As to interests not disposed of in regard to proceeds of sale of land.

When real estate is directed to be converted, and the whole of the proceeds of sale are not absolutely disposed of, or the disposition thereof wholly or partially fails by lapse or otherwise, the person who would have been entitled thereto but for the direction to convert is not thereby deprived of his rights unless the whole beneficial interest in the proceeds of sale is in the event absolutely disposed of. So far, therefore, as the beneficial interest is either directly or indirectly undisposed of, or becomes so by subsequent events, the interest undisposed of under the old law belonged to the heir and not to the next-of-kin.(*u*) This distinction will in nearly all cases be immaterial where the death occurs after 1925: Ad. of E. Act, 1925, s. 46. Under the old law, if, after the failure of the disposition, the heir died, his personal representatives and not his heir were entitled to the undisposed of proceeds: *Wilson* v. *Coles* (1860), 28 Beav. 215. The principle was clear: the trust for conversion was created for the benefit

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(*t*) *Crabtree* v. *Bramble* (1747), 3 Atk. 680; *Mutlow* v. *Bigg* (1875), 1 Ch. D. 385; 45 L. J. Ch. 282; *Re Gordon* (1877), 6 Ch. D. 531; 46 L. J. Ch. 794; *Holder* v. *Lofts*, cited 30 Ch. D. 656; 55 L. J. Ch. 234; see also *Re Davidson* (1879), 11 Ch. D. 341.

Resulting trust for settlor.

(*u*) *Ackroyd* v. *Smithson* (1780), 1 Bro. C. C. 503; 1 Wh. & T., 8th ed., 394, and cases there cited. If, however, real estate was settled by *deed* upon trust to sell for certain specified purposes, and any of those purposes failed then, whether the trust for sale was to arise in the lifetime of the settlor, or after his death, the property to that extent resulted to the settlor as personalty from the moment the deed was executed: *Clarke* v. *Franklin* (1858), 4 K. & J. 257; 27 L. J. Ch. 567; and see *Re Grimthorpe* [1908], 2 Ch. 675; 78 L. J. Ch. 20; see also *O'Grady* v. *Wilmot* [1916], 2 A. C. 231; 85 L. T. Ch. 386; *Re Ffennell* [1918], 1 Ch. 91; 87 L. J. Ch. 54; *Re Hopkinson* [1922], 1 Ch. 65; 91 L. J. Ch. 128.

of the legatees, and not for the next-of-kin, so that there was no ground for depriving the heir of the undisposed of interest simply because, under the trust for the particular purposes of the Will, a sale took place.

Order for sale.

An order for sale in an administration action converted real estate into personal estate from the date of the order.(v)

Permissive waste.

A tenant for life of freeholds or leaseholds is not liable to the remainderman for permissive waste.(w) If, however, the property is vested in trustees (after 1925 it will be vested in trustees), it is their duty (in the interest of all their beneficiaries) to see that it does not fall into decay for want of proper repairs, and the usual course is for them to apply to the court for directions. On such an application the court will direct the money to be raised in such a way as will apportion the burden fairly between the tenant for life and remainderman.(x) This doctrine does not apply where the trustees are bare trustees with no duties to perform: *Re Willis* [1902], 1 Ch. 15; 71 L. J. Ch. 73.

Repairs under direction of court.

Application out of capital repayable by instalments.

In view of the wide powers to effect improvements out of capital (S. L. Act, 1925, 3rd Sch.), and if necessary to raise the money by mortgage: *ib.*, s. 71 (1) (ii); there will not be many cases where the expenditure should be borne partly out of capital and partly out of income which cannot properly be treated as improvements, payable in the first instance out of capital, to be replaced by instalments where so provided by *ib.*, s. 84; 3rd Sch., Pts. II and III.

Trustees of leaseholds should repair.

As regards leaseholds bequeathed in trust for persons in succession, the tenant for life is bound, as between himself and the general estate of the testator, to bear the burdens incident to the property under the terms of the lease, *e.g.*, to pay the rent and perform the covenants as to repair and insurance. But if

Expenses payable by tenant for life or out of general estate according to circumstances.

(v) *Fauntleroy* v. *Beebe* [1911], 2 Ch. 257; 80 L. J. Ch. 654; *Herbert* v. *H.* [1912], 2 Ch. 268; 81 L. J. Ch. 733.

(w) *Powys* v. *Blagrave* (1854), 4 D. M. & G. 448; 24 L. J. Ch. 142; *Re Cartwright* (1889), 41 Ch. D. 532; 58 L. J. Ch. 590; *Re Parry* [1900], 1 Ch. 160; 69 L. J. Ch. 190; Theobald, 7th ed., 535 *et seq.* As to equitable waste: L. P. Act, 1925, s. 135; 1 Wolst. & Cherry, 11th ed., 357.

(x) *Re Hotchkys* (1886), 32 Ch. D. 408; 55 L. J. Ch. 546; *Re Freman* [1898], 1 Ch. 28; 67 L. J. Ch. 14; *Re McClure* (1907), 76 L. J. Ch. 52; and see *Re Farnham* [1904], 2 Ch. 561; 73 L. J. Ch. 667; see *Re Wilkie* [1914], 1 Ch. 77; 83 L. J. Ch. 174, as to costs of application; *Re Tubbs* [1915], 2 Ch. 137; 84 L. J. Ch. 539, as to the construction of a clause empowering S. L. Act trustees to effect repairs out of the income of the settled land, see *Re Earl of Stamford and Warrington* [1916], 1 Ch. 404; 85 L. J. Ch. 241.

Repairs.

repairs are rendered necessary by the neglect of the testator to observe the covenants in his lifetime, the expenses should be raised out of his general estate.(*y*)

SECT. IX.—*In what cases precatory words in a Will, or instructions by parol, or an unattested writing, create a trust.*(*z*)

When precatory words create a trust.

A gift of property is sometimes accompanied by what are called precatory words, *i.e.*, words of recommendation or desire or confidence, that the devisee or legatee will dispose of the property for the benefit of some other person; in such cases the question arises whether a trust is created. In considering whether a precatory trust is attached to any legacy, the court will be guided by the intention of the testator, and not by any particular words in which the wishes of the testator are expressed.(*a*) Reported cases are of little value; "the whole Will must be looked at; and unless it appears from the whole Will that an obligation was intended, no obligation will be held to exist; moreover, in some of the older cases obligations were inferred from language which in modern times would be thought insufficient to justify such an inference": *Per* Lindley, L.J., in *Re Williams* [1897], 2 Ch. at p. 18.

Verbal or written instructions create a trust, if assented to by legatee.

If a testator, either verbally or by an unattested writing, communicates to a devisee or legatee his wishes that the latter shall dispose of the property given to him in a particular manner, and the devisee or legatee promises to comply with those wishes, or by his silence leaves the testator to suppose that he intends to do so, the court will compel him to perform the promise or understanding on the faith of which he has acquired the property: *Re Gardner* [1920], 2 Ch. 523; 89 L. J. Ch. 649. But instructions contained in an unattested writing, which is not communicated

But not otherwise.

Deer Park.

(*y*) See Theobald, 7th ed., 537, and cases there cited; *Re Sutton* (1912), 56 Sol. J. 650, as to the expenses of the upkeep of a deer park, see *Paine* v. *Countess of Warwick* [1914], 2 K. B. 486; 83 L. J. K. B. 895. The rule in *Proudfoot* v. *Hart* (1890), 25 Q. B. D. 42, with regard to the liability of a tenant to repair leaseholds applies to a tenant for life under a covenant to repair in a settlement: *Evans* v. *Shotton* [1918], 87 L. J. Ch. 527.

(*z*) See generally, Lewin, 13th ed.

(*a*) *Re Hamilton* [1895], 2 Ch. 370; 64 L. J. Ch. 799; *Re Williams* [1897], 2 Ch. 12; 66 L. J. Ch. 485; *Re Oldfield* [1904], 1 Ch. 549; 73 L. J. Ch. 433; *Comiskey* v. *Bowring Hanbury* [1905], A. C. 84; 74 L. J. Ch. 263; *Re Burley* [1910], 1 Ch. 215; 79 L. J. Ch. 182; *Re Conolly* [1910], 1 Ch. 219; 79 L. J. Ch. 148; *Re Atkinson* [1911], 80 L. J. Ch. 370; *In b. Hanmer* (1911), 80 L. J. P. 119; *Re Jevons* (1911), 56 Sol. J. 72; *Re Berryman* [1913], 1 Ir. R. 21.

to the devisee or legatee until after the testator's death, impose no obligation.(*b*)

Secret trusts.

Where a gift is made to joint tenants, A. and B., on a secret trust, which is communicated to A. but not to B., both will be bound by the trust if the promise of A. to carry out the trust was made before the Will; but if A.'s promise was entered into subsequently to the making of the Will, then B. is not bound by it, and takes beneficially: *Re Stead* [1900], 1 Ch. 237; 69 L. J. Ch. 49.

Protection of purchasers without notice of trust.

As to the protection of a purchaser of a legal estate without notice of a trust where the legal estate has been divested by L. P. Act, 1925, 1st Sch., Pt. II, see amendment of para. 3 in the Sch. to the L. P. (Amend.) Act, 1926.

Rule applies whether Will refers to undisclosed trust or not.

The above rule applies where the gift to the devisee or legatee is on the face of the Will for his own benefit, and also where the Will refers to an undisclosed trust,(*c*) but in the latter case disclosure to one of the two legatees is sufficient: *Re Gardom* [1914], 1 Ch. 662; 83 L. J. Ch. 681.

Gift to a trustee on undisclosed trust lapses in equity.

If it appears on the face of a Will that A., a devisee or legatee, is to hold the property given to him as a trustee, but the trust is not disclosed except by an unattested memorandum not communicated to A. until after the testator's death, the beneficial interest in the property will be treated as undisposed of, and will fall into residue, or devolve as in the case of a lapsed gift.(*d*)

SECT. X.—*The liability of the property of a deceased person to the payment of his debts, and the duties and liabilities of the personal representatives in respect thereof.*

Devolution on death of real and personal estate.

All the personal estate (other than leaseholds after 1925) of a deceased person devolves on the personal representatives under the general law. All the real estate, including leaseholds, devolve on a death after 1925 on the personal representatives under Ad. of E. Act, 1925, ss. 1–3 (Pt. I). This Part of the Act does not affect any rule as to administration of assets.

(*b*) *McCormick* v. *Grogan* (1871), L. R. 4 H. L. 82; *Re Pitt-Rivers* [1902], 1 Ch. 403; 71 L. J. Ch. 225; *cf. Re Boyes* (1884), 26 Ch. D. 531; 53 L. J. Ch. 654.

(*c*) *Re Fleetwood* (1880), 15 Ch. D. 594; 49 L. J. Ch. 514; *Re Huxtable* [1902], 2 Ch. 793; 71 L. J. Ch. 876; *cf. Re Hetley* [1902], 2 Ch. 866; 71 L. J. Ch. 769.

(*d*) *Muckleston* v. *Brown* (1801), 6 Ves. 52; *Re West* [1900], 1 Ch. 84; 69 L. J. Ch. 71.

Payment of mortgage debts.

Under s. 35 (replacing and extending the principle of the Real Estate Charges Acts) a legal or equitable mortgage debt (including a lien for unpaid purchase-money) will, unless a testator expressly directs to the contrary, be borne primarily by the property (not merely land) charged therewith.

Order of application of assets where estate is solvent.

Subject to this and to any directions contained in the Will the real and personal property of a person dying solvent is applicable for the discharge of the funeral, testamentary, and administration expenses and debts (s. 34 (3)) in the order named in Pt. II of the 1st Sch., namely :—

(1) Undisposed of property, subject to setting aside a legacy fund.

(2) Property not specifically devised or bequeathed (included in a residuary gift), subject to setting aside a legacy fund not provided for as above.

(3) Property specifically appropriated or disposed of as a fund for payment of debts.

(4) Property charged with or disposed of subject to a charge for debts.

(5) The legacy fund, if any.

(6) Property specifically disposed of, rateably.

(7) Property appointed by Will under a general power, including the power to dispose of entailed interests, rateably.

(8)—(*a*) The order may be varied by the Will.

(*b*) Pt. II of the Sch. does not affect the liability of land to answer death duty imposed thereon in exoneration of other assets.

Administration of insolvent estates.

On the other hand, if the estate of the deceased is insolvent, the real and personal estate is administered (1st Sch., Pt. I) in the following order :—

(1) The funeral, testamentary, and administration expenses have priority.

(2) Subject to that the bankruptcy rules apply : see Bkcy. Act, 1914, s. 130.(*dd*) The Crown is bound and does not obtain any special priority : Ad. of E. Act, 1925, s. 57.

Right of retainer and to give preference.

The right of retainer and to prefer creditors applies to all the assets, but the right of retainer only applies to debts owing to the personal representative in his own right : *ib.*, s. 34 (2) ; hence he cannot, for instance, retain a debt owing to him as a trustee of a settlement.

(*dd*) Revived by Expiring Laws Continuance Act, 1926.

Debts include future liabilities.

The debts of a deceased person include all liabilities which may result out of obligations entered into by him in his lifetime, *e.g.*, the liability to pay the rents and perform the covenants in a lease,(*e*) or liability for subsidence from mining.

Assignment by legatee valid against debts.

An assignment for valuable consideration by a legatee of personal estate with the assent of the executor is valid against any debts of the testator remaining unpaid.(*f*)

Not liable in respect of rent and covenants in lease or fee farm grant in certain cases.

The T. Act, 1925, s. 26 (as amended by L. P. (Amend.) Act, 1926), provides in effect that a personal representative or trustee who has assigned leaseholds or land affected by a rentcharge to a purchaser or other person entitled, and has distributed the residuary estate or trust estate among the persons entitled thereto, shall not be personally liable in respect of any subsequent claims under the lease or grant for rent or breach of covenants. Under the section it is necessary to set aside a sum to answer a future claim in respect of any fixed and ascertained sum agreed to be laid out on the property. The lessor or grantor may follow the residuary estate or trust estate into the hands of the persons among whom it may have been distributed. The section applies to any indemnity which may have been given in respect of any such rent or covenant. This section does not apply where money is paid to an assignee of onerous leaseholds to take an assignment: *Re Lawley* [1911], 2 Ch. 530; 81 L. J. Ch. 97.

Ascertained liability.

Power to distribute without liability to creditors who do not give notice after advertisement.

Under T. Act, 1925, s. 27 (as amended), a personal representative or trustee who has advertised for creditors to send in their claims in the manner required by that section may distribute the property to which the notice relates, among the persons entitled thereto, having regard to the claims of which he has had notice at the time of distribution, and will not be liable for the assets to any creditor of whose claim he had not notice. As the section now extends to trustees and to property generally, the notices prescribed by the section are rather more extensive than those required under the L. P. Act, 1859, s. 29, which is repealed. Not less than two months must be allowed for claims. The section does not prevent the claimants from following the property save as against a purchaser. The trustee or personal representative must see that the usual searches which a purchaser would have made are carried out, namely, against the testator, intestate or settlor, and the persons deriving title under him. They cannot shut their eyes to matters which

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(*e*) *Hamer's Devisees Case* (1852), 2 D. M. & G. 366; 21 L. J. Ch. 832.

(*f*) *Dilkes* v. *Broadmead* (1860), 2 D. F. & J. 566; 30 L. J. Ch. 268.

would have affected a purchaser, but such searches will seldom be required, the facts will generally be known to the representatives, who must see that the assent or conveyance is made to the proper person.

Effect of Pt. I of the Ad. of E. Act, 1925.

Part I of the Ad. of E. Act, 1925 (taking the place of ss. 1 and 2 of the L. T. Act, 1897), vests the real estate and chattels real of a person dying after 1925 in his personal representatives, and confers and imposes on them the same powers and duties in regard to the real estate and chattels real as formerly applied to chattels real; for instance, the survivors or a sole representative can act. But where there are two or more representatives they must (save in the case of separate representation to trust estates) all act.

Proving executors.

Proving executors can act alone, meeting the decision in *Re Pawley* [1900], 1 Ch. 58; 69 L. J. Ch. 6, in accordance with Conv. Act, 1911, s. 12, now repealed.

Personal representatives are not trustees for all purposes.

It is a mistake to suppose that the Ad. of E. Act, 1925, converts the personal representatives into trustees for the persons interested so as to fetter their powers to act in place of the testator or intestate. The vesting in the representatives does not affect the beneficial interest under any testamentary disposition or the mode of dealing with beneficial interests or the right of persons claiming to be interested to take proceedings for the protection or recovery thereof: s. 2 (3). Again, though under s. 33 a trust for sale is imposed in regard to the real and personal estate of a person dying intestate, this is an administrative matter, it operates to vary the duties of personal representatives as such; for certain purposes no doubt they are and always have been trustees, but they retain their rights as representatives till an assent or conveyance is made or new or additional trustees are appointed. See also s. 49 (b).

Powers of personal representatives.

For the purposes of administration, or during a minority or the subsistence of any life interest or until the period of distribution arrives, they have all the powers which personal representatives had before 1926 with respect to personal estate; in addition, they have all the powers, including the over-reaching powers of trustees for sale. These include all the powers of a tenant for life: L. P. Act, 1925, s. 28, as amended. A purchaser, for money's worth, is not concerned even if he has notice that all the debts, duties and legacies have been paid: Ad. of E. Act, 1925, s. 36 (8); the representatives may be managing the land during a minority, or the persons entitled to an assent may be satisfied

Over-reaching powers.

that the personal representatives should retain control. As to settled land vested in personal representatives: S. L. Act, 1925, s. 110 (3).

Trustee for sale with over-reaching powers.

Without the appointment of a trust corporation or the approval by the court under L. P. Act, 1925, s. 2 (2) as amended, trustees for sale (formerly S. L. Act trustees) who take the land under S. L. Act, 1925, s. 36 (trust for sale arising by reason of undivided shares) can over-reach the family charges created by the settlement in priority to the trust for sale: *ib.*; similarly trustees for sale taking under L. P. Act, 1925, 1st Sch., Pt. IV, can over-reach the interests, &c., under a settlement which had priority to the interests of the persons entitled to the undivided shares: L. P. (Amend.) Act, 1926, amending para. 1 (3). Any other trustees for sale can obtain over-reaching powers under L. P. Act, 1925, s. 2 (2). Personal representatives are expressly given the over-reaching powers by Ad. of E. Act, 1925, s. 39, without obtaining any order of the court.

When they become trustees.

If personal representatives assent in writing to land vesting in themselves as trustees for sale, or as statutory owners (Ad. of E. Act, 1925, s. 36; S. L. Act, 1925, s. 8), they become trustees. In the meantime they can, before giving an assent, permit the beneficiaries to take possession: Ad. of E. Act, 1925, s. 43. This does not affect the rights of the representatives to convey as if they were in possession: *ib.*

Letting beneficiaries into possession.

Rights against personal representatives.

The rights of persons claiming against the representatives to have possession, a receiver, an assent, conveyance, or to be registered as proprietor, are regulated by *ib.*, s. 43 (2). That section applies whether the testator or intestate dies before 1926 or after 1925.

Raising money to pay debts, &c.

The personal representatives are the persons to raise money for payment of debts, &c.: *ib.*, s. 39 (1). See also T. Act, 1925, ss. 16, 17, which apply as well to personal representatives as to trustees: *ib.*, ss. 68 (17), 69 (1).

Effect of charge of debts.

Though the Ad. of E. Act, 1925, renders unnecessary (*g*) an express charge of debts on real estate (including enfranchised land and leaseholds), it does not affect the application of the doctrine of marshalling in favour of pecuniary legatees where land is devised subject to an express charge of debts, and the residuary estate is exhausted in paying debts: *Re Kempster*

(*g*) See *Re Cavendish and Arnold* (1912), 56 Sol. J. 468; *cf. Re Wicksteed* [1921], 2 Ch., at p. 188.

[1906], 1 Ch. 446; 75 L. J. Ch. 286. Marshalling is expressly preserved by s. 2 (3) (a), while a charge for debts alters the order for administration prescribed by 1st Sch., Pt. II: see paras. 3 and 4. The Act does not render nugatory a charge of debts on real estate which brings the debts within the R. P. Lim. Act, 1874: *Re Balls* [1909], 1 Ch. 791; 78 L. J. Ch. 341.

Assents by personal representatives.

Assents in writing after 1925 are the normal modes of assurance by personal representatives in regard to interests in land (not mortgage debts): Ad. of E. Act, 1925, s. 36; S. L. Act, 1925, ss. 6, 8; save where the personal representatives are themselves selling, exchanging, mortgaging, or leasing the land. Assents are available for giving effect to the right of a purchaser who has acquired an equitable interest in land (not in a mortgage debt) from a beneficiary claiming under a Will or an intestacy. They are applicable though the testator or intestate may have died before 1926: Ad. of E. Act, 1925, s. 36 (12). Thus, if an heir has become entitled before 1926, the representatives may assent to the legal estate in the land vesting in him, a conveyance is no longer requisite. Again, if an appropriation is made under s. 41 or under an express power, legal effect can be given thereto by an assent in writing. An assent may be made in favour of a person deriving title under the original claimant.

Settled land.

If the land is or becomes settled land, the assent will take the form of a vesting assent: S. L. Act, 1925, 1st Sch., Form No. 5; thus, if land has become vested in a tenant for life under L. P. Act, 1925, 1st Sch., Pt. II, para. 5, on his death the legal estate will (whether or not a vesting deed has been made in his favour under S. L. Act, 1925, 2nd Sch., para. 1) vest in his special personal representatives, who will generally be the S. L. Act trustees: Ad. of E. Act, 1925, ss. 23–24; Jud. Act, 1925, s. 162.(gg) These representatives will, after satisfying themselves as to death duties and clearing any family charges which have become raisable, assent to the legal estate passing to the person next entitled. If that person is a tenant for life or statutory owner, the assent will name S. L. Act trustees and generally comply with the provisions affecting vesting assents. On the other hand, if he is absolutely entitled free from family charges, the assent will be absolute: see L. P. Act, 1925, 5th Sch., Form

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(gg) If the trustees renounce (as they should do, *e.g.*, where the land is appointed under a general power on trust for sale), the settled land will be included in the grant to the general executors: see Non-Contentious Probate Rules, 1925, r. 118.

No. 8. Or, if the persons entitled are trustees for sale (*e.g.*, under S. L. Act, 1925, s. 36), then the assent will declare a trust for sale: L. P. Act, 1925, 5th Sch., Form No. 9. If there is an express power to appoint new trustees for sale, then this power should be set out in the assent on trust for sale: see T. Act, 1925, s. 35; for to comply with that section a separate deed should be used when new trustees of the assent are appointed. This deed should be distinct from the appointment of new trustees of the instrument declaring the trusts of the proceeds of sale. If, however, the trusts of the proceeds are declared by the same instrument as that under which the trust for sale *takes effect*, then, as under the old practice when this occurred, nothing is gained by having two appointments of new trustees.

Land held as trust for sale.

If a testator devises his land on trust for sale and the assent is made after 1925, it is not the Will under which the trust for sale *takes effect*, but the assent. The Will, as such, does not come on the title to the legal estate, it takes effect in equity: L. P. (Amend.) Act, 1924, 9th Sch., para. 3. The probate, plus the assent on trust for sale, are the documents to be produced to a purchaser.

Devise on trust for sale.

As to the endorsements to be made on probates and letters of administration of notices of assents: Ad. of E. Act, 1925, s. 36 (5) to (7). This section effectually keeps the trusts off the title to the land.

Endorsements.

An assent does not, except in favour of a purchaser for money's worth, affect the right to recover the estate to which the assent relates or to be indemnified by such estate against duties or other liabilities: *ib.*, s. 36 (9); further, the personal representative may require security to be given for the discharge of duties or liabilities: *ib.*, s. 36 (10). In these circumstances the special power conferred by S. L. Act, 1925, s. 8 (6), to convey subject to the reservation of a term of years on trusts for creating an indemnity against duties will seldom, if ever, be required by a personal representative.

Rights to indemnity for duties and liabilities.

An assent, if not under seal, does not require a stamp.(*h*)

Stamp.

A devise or trust for the payment of debts raises no trust for the payment of those debts which have been barred by the Limitation Acts before the death of the testator: *Burke* v. *Jones* (1813), 2 Ves. & B. 275; if the time allowed by the statute has not run out at the testator's death, such a devise or trust will

Devise for the payment of debts as to a statute barred debt.

(*h*) *Kemp* v. *I. R. C.* [1905], 1 K. B. 581; 74 L. J. K. B. 112; Ad. of E. Act, 1925, s. 36 (11).

not prevent the statute from running in equity after the death of the testator either as to real (*i*) or personal estate.(*j*)

Retainer.

A creditor who is an undischarged bankrupt and to whom letters of administration are granted cannot retain his debt. His trustee in bankruptcy is entitled to it: *Wilson* v. *W.* [1911], 1 K. B. 327; 80 L. J. K. B. 296. See now as to retainer: Ad. of E. Act, 1925, s. 34 (2).

SECT. XI.—*Provisions as to number of Personal Representatives, &c.*

Not more than four.

Under s. 160 of the Jud. Act, 1925 (replacing Ad. of E. Act, 1925, s. 12), probate or administration will not be granted to more than four persons in respect of the same property; as regards trustees compare T. Act, 1925, ss. 34 and 36.

Not less than two administrators; when.

If there is a minority or if a life interest arises under a Will or an intestacy, administration will be granted either to a trust corporation (with or without an individual) or to not less than two individuals: Jud. Act, 1925, s. 160 (1); but where the estate is insolvent the court will make the grant to a creditor: s. 162 (1); *Re Herbert* [1926], P. 109.

It is conceived that if the spouse of an intestate takes the personal chattels and the rest of the estate does not exceed £1,000 there is no life interest in "subsistence," hence the possibility that further property, not anticipated, may pass under the intestacy so as to bring the figure above £1,000 is not sufficient to justify the probate authorities in refusing to grant administration to a single individual: see the word "subsistence" in sub-s. (2).

Probate may be granted to a sole executor.

There is nothing to prevent probate being granted to a sole executor, nor to prevent a sole executor from giving valid receipts: L. P. Act, 1925, s. 27 (2); *cf.* T. Act, 1925, ss. 14 and 15.

Power to appoint an additional representative.

If there is only one personal representative (*i.e.*, an executor or administrator) not being a trust corporation, then during the minority of a beneficiary or the subsistence of a life interest the court *may* appoint an additional personal representative: Jud. Act, 1925, s. 160 (2).

That section applies to grants made after 1925 whether the testator or intestate dies before or after 1st January, 1926.

(*i*) R. P. Lim. Act, 1874, s. 10; and see *Williams* v. *W.* [1900], 1 Ch. 152; 69 L. J. Ch. 77.

(*j*) *Evans* v. *Tweedy* (1839), 1 Beav. 55; 8 L. J. Ch. 46; *Freake* v. *Cranefeldt* (1839), 3 M. & Cr. 499; 8 L. J. Ch. 61.

Discretion as to administration.

In granting administration to estates of persons dying after 1925 regard will be had to the rights of the persons interested in the estate of the deceased or in the proceeds of sale thereof (see Ad. of E. Act, 1925, s. 33, imposing a trust for sale for administration purposes in regard to the whole or part undisposed of); administration with the Will annexed may be granted to a devisee or legatee, and in regard to land settled previously to the death of the deceased and not by his Will, *may* be granted to the S. L. Act trustees, and any such administration may be limited in any way the court thinks fit: Jud. Act, 1925, s. 162 (1).

Special executors as respects settled land.

If the testator makes a Will, though he may die wholly or partially intestate, he will be deemed to have appointed as his special executors in regard to land vested in him which was settled previously to his death, the persons (if any) who were at his death the S. L. Act trustees, and probate may be granted to them specially limited to the settled land: Ad. of E. Act, 1925, s. 22 (1), but see *Re Herbert, supra.*

Administration bonds.

No administration bond is required in the case of executors; as to administration bonds generally: Jud. Act, 1925, s. 167.

Sureties.

Under Non-Contentious Probate Rules, 1925, r. 114, sureties are not required when the grant is made to a trust corporation; where made to two or more individuals (*e.g.*, to S. L. Act trustees), the Registrar has a discretion: *ib.*, r. 39.

Persons interested in residuary estate of intestate.

Under Jud. Act, 1925, s. 162 (1) proviso, where the deceased dies wholly intestate, administration will, save where the estate is insolvent or in special cases, be granted to one or more of the persons interested in the "residuary estate" (see Ad. of E. Act, 1925, s. 33 (4); it does not appear to be defined in Jud. Act, 1925, s. 175), and as regards land settled previously to the death to the S. L. Act trustees, if willing to act.

Settled land.

Land ceasing to be settled land.

If the land ceases on the death to be "settled land" it may still be expedient that the S. L. Act trustees should be given the grant, though this may not be essential; they may renounce, in which case the land will not be excepted out of the general grant.

Grant given to persons who are not S. L. Act trustees.

Where the grant is made to persons who are not S. L. Act trustees, then if the land remains settled land (see the words "Upon trust to convey the land to . . . the tenant for life or statutory owner" which would not be applicable if the land had ceased to be settled land) this can be rectified under Ad. of E. Act, 1925, s. 23, provided the trustees are willing to act, as no doubt would be the case, as the land *ex hypothesi* remains settled land.

Separate representation for settled land and other property.

Under Ad. of E. Act, 1925, s. 22 (2), a testator may appoint other persons, with or without the S. L. Act trustees, to be his general executors in regard to his other property. The special personal representatives may dispose of the settled land without the concurrence of the general representatives, while the latter may dispose of the other property without the concurrence of the special representatives: *ib.*, s. 24.

Separate representation for real and personal estate and for trust estate.

Under Jud. Act, 1925, s. 155 (reproducing Ad. of E. Act, 1925, s. 13), representation may be granted in respect of the real estate (which includes leaseholds) separately or together with the personal estate, and may be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate (which would include land settled before the death) only, and a grant of administration to real estate may be limited in any way thought fit. If, however, the estate is insolvent, representation will not be severed except as regards a trust estate.

Insolvent estate.

Dispensing with probate or administration, as respects pure personalty.

Representation may still be dispensed with in the case of personal estate, not including chattels real: Ad. of E. Act, 1925, s. 53 (2). It cannot be dispensed with in regard to land, whether freehold or leasehold, for the probate or administration is an essential link in the title to the legal estate.

One year for distribution.

Subject to the rights conferred by Pt. III of the Act (see in particular s. 43 (2)) a personal representative may postpone distribution for one year from the death: s. 44.

SECT. XII.—*The administration and distribution of the real and personal estate of an intestate, and the rights of the Crown where the intestate leaves no statutory next-of-kin.*

Old law as to distribution.

The old law as to distribution on an intestacy is discussed in the 21st ed., vol. II, pp. 813 to 817.

Trust for sale.

Where a person dies intestate after 1925, as to any real or personal estate it will be held on trust for sale: Ad. of E. Act, 1925, s. 33, and the powers of trustees for sale will be exercisable by the personal representatives without prejudice to their rights and powers for purposes of administration: L. P. Act, 1925, s. 33, see also Ad. of E. Act, 1925, s. 39.

Under s. 33 (2) the net proceeds with any ready money undisposed of will be applied in discharging liabilities in accordance with the new rules (see 1st Sch.) of administration.

Power to invest.

Pending distribution the residue may be invested in investments authorised by statute (see T. Act, 1925, Pt. I) for the investment of trust money, with power to vary. So far as the money arises from the sale of land it may be re-invested in the purchase of land to be conveyed on trust for sale: L. P. Act, 1925, s. 28 (1); S. L. Act, 1925, s. 73 (1) (x).

" Residuary estate of the intestate."

The residue not required for administration purposes, and the investments representing it, is defined as " the residuary estate of the intestate": Ad. of E. Act, 1925, s. 33 (4).

Application of income.

The income, however invested, may, from the death, be treated and applied as income, hence the rule in *Howe* v. *E. of Dartmouth* (1802), 7 Ves. 137, does not apply, but any necessary apportionment may be made between tenant for life and remainderman, so that, when necessary, the principles in *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295; 36 L. J. Ch. 929, may be made use of.

The section does not affect the right of creditors nor the rights of the Crown in respect of death duties.

Abolition of rules of descent.

The old rules of descent, &c., are abolished by s. 45 as well as escheat for want of heirs, but the section does not affect the devolution of entailed interests, as to which see L. P. Act, 1925, s. 130.

New law of succession.

Subject only to the exceptions in Ad. of E. Act, 1925, s. 51 (Lunatics of full age on 1st January, 1926, and an infant dying unmarried after 1925, who in certain cases is deemed to have had an entailed interest), and to certain rights of the Crown reserved by s. 57, the new law as to succession on an intestacy is governed by ss. 46 and 47.

Rights of the spouse.

Under s. 46 (1) the surviving spouse takes the " personal chattels" (defined s. 55 (1) (x)) absolutely and a first charge of £1,000 free of duties and costs on the remainder of the residuary estate, with interest at £5 per cent. from the death till paid or appropriated.

If the intestate " leaves no issue" (see s. 47 (2) (b)) the spouse takes a life interest in the balance after deducting the chattels and the £1,000 charge. This life interest may be redeemed and the £1,000 charge may be raised under s. 48.

If the intestate leaves issue (see s. 47 (2) (c)) the spouse takes a life interest in a moiety of the balance. But if the trusts for issue fail in the lifetime of the spouse, then the spouse takes a life interest in the whole.

On failure of the trusts for the other statutory next-of-kin, the spouse will under the 6th trust in para. (v) take absolutely.

Rights of the issue.

If there is a surviving spouse, the issue take subject to the gift of chattels, the charge for £1,000 and the life interest in a moiety above mentioned.

"Statutory trusts" in relation to an intestate's estate.

The other moiety is held on the "statutory trusts" for the issue. These trusts are defined in s. 47 (1). Under them the children who attain twenty-one or marry take, and if more than one equally. The issue of a child who predeceases the intestate take the share their parent would have taken if surviving the intestate. The issue take per stirpes through all degrees at twenty-one or marriage. The statutory power of advancement (T. Act, 1925, s. 32) is applicable, so are the provisions (*ib.*, s. 31) for maintenance and accumulation of surplus income. When an infant marries he can give valid receipts for income, including statutory accumulations of income during the minority: L. P. Act, 1925, s. 21. Where two or more take, a child must bring into account property advanced by the intestate or settled on the marriage of the child by the intestate, at a valuation. The personal representatives may permit an infant contingently interested to have the use of any "personal chattels," that is assuming that there is no surviving spouse to take them absolutely.

If no spouse survives, then the issue of the intestate take the whole of the "residuary estate" not otherwise disposed of on the "statutory trusts."

On the death of a surviving spouse the moiety in which that spouse had a life interest is released and the issue take it under the "statutory trusts."

Rights of father and mother.

If the issue fail, then, subject to the rights of a surviving spouse, if any, the father and mother of the intestate take, and if both survive the intestate, equally.

Brothers and sisters of the whole blood and their issue.

If the issue and parents fail, then subject to the rights of a surviving spouse, the brothers and sisters of the whole blood and their issue by substitution, take under the "statutory trusts," but, save in the case of issue of the intestate, no property advanced or settled has to be brought into account: s. 47 (3).

The like of the half blood.

The second trust in para. (v) of s. 46 (1) provides similarly for the brothers and sisters of the half blood and their issue.

Grand-parents.

Next come the grand-parents; if more than one survive the intestate, they take equally.

Uncles and aunts of the whole blood and their issue.

The fourth trust is for the uncles and aunts of the whole blood and their issue through all degrees.

The like for those of the half blood.

The fifth is for the uncles and aunts (brothers and sisters of the half blood of a parent of the intestate) and their issue similarly.

Spouse absolutely.

Failing the above trusts, the surviving spouse, if any, of the intestate, takes absolutely.

It will be noticed that (though provided for in the Bill for the Act) great grand-parents, great uncles and aunts, and second cousins, are ruled out. The reason is that the cost of furnishing evidence of such kinship is generally so heavy that it is better to allow the Crown a discretion.

The rights of the Crown.

Failing the above trusts, the residuary estate goes to the Crown as *bona vacantia*. But the Crown, or the Duchy of Lancaster, or Duke of Cornwall (as the case may require), without prejudice to their statutory or other powers, may, out of the whole or any part of the property, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate and other persons, for whom the intestate might reasonably have been expected to make provision. Thus it is open for the Crown to provide for a mistress of the deceased and her children by him, or for any employee.

Provision for dependants, &c.

Husband and wife treated as two persons.

For the purposes of the new law of succession, a husband and wife are treated as two persons: see also L. P. Act, 1925, s. 37, under which, for the purpose of acquiring any interest in property under a disposition coming into operation after 1925, they are also treated as two persons.

Partial intestacies.

Partial intestacies are dealt with by Ad. of E. Act, 1925, s. 49; property given by the Will to the issue of the deceased will be brought into account, but not property given to other persons. Subject to their rights and powers for purposes of administration, personal representatives are trustees for the new statutory next-of-kin in regard to property undisposed of, unless it appears by the Will that they are to take beneficially.

Personal representatives, extent of trusteeship.

Old law as to advancements.

The old authorities as to what gifts were to be treated as advancements may be material in ascertaining what property should be brought into account by the issue of the intestate. Thus an advancement by portion within the 3rd section of the Statute of Distribution included a sum given by a parent to establish a child in life or to make a provision for such child, as, *e.g.*, on marriage, or by buying an outfit for a son going into the army, or by buying a goodwill of a business, or by paying a son's admission fee to an Inn of Court, or the premium and stamp on his being articled to a solicitor. On the other hand, mere annual payments were not treated as advancements, *e.g.*, the payment of a fee to counsel in the case of a son going to the Bar, or the price of outfit and passage-money of an officer in the army going out to India with his regiment.(*k*) A sum of money given by a father to a son, to enable him to pay debts, was not necessarily an advancement to the son by way of portion, but might be regarded as a temporary assistance.(*l*)

Distribution of moveable property is according to law of domicile.

Moveable property, wherever locally situated, is distributed according to the law of the place where the intestate was domiciled at his death, but for this purpose a chattel interest in land is not regarded as moveable.

Crown's right to representation.

Part I of the L. T. Act, 1897, did not bind the Crown: *In b. Hartley* [1899], P. 40; 68 L. J. P. 16; but the Ad. of E. Act, 1925, does so, see s. 57. Accordingly, s. 30 provides for administration being granted to the Treasury Solicitor (see also s. 55 (1) (xxv)) or other nominee in regard to real estate as well as personal estate; no statement on oath is required in such cases.

Legitimacy Bill.

If the Legitimacy Bill now before Parliament becomes law, it must be borne in mind that, as respects the distribution of an estate of a person dying intestate after 1926, new claimants may arise.

SECT. XIII.—*Probate and administration.*

Old law.

Under the Court of Probate Act, 1857, a Will of personal estate only had to be proved, or if the owner had died intestate administration to his effects had to be taken out in the Probate Division, either in the principal registry, or in the registry of the district in which the testator or intestate had a fixed place of abode at his death: s. 46. The Intestates Acts, 1873 and 1875, provided that where an intestate's estate does not exceed £100, the widow or children of the intestate, if residing more than three miles from the Probate District Registry, may apply to the Registrar of the County Court, and obtain letters of administration through him.

Probate, &c., also necessary as regards real estate after 1897.

By Pt. I of the L. T. Act, 1897, real estate was placed on the same footing as chattels real, as regards the necessity for probate or letters of administration, where the owner had died after 1897, but for this purpose "real estate" did not include land of copyhold tenure, or customary freeholds, in any case in which an admission or any act by the lord was necessary to perfect the

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(*k*) *Boyd* v. *B.* (1867), L. R. 4 Eq. 305; 36 L. J. Ch. 877; *Taylor* v. *T.* (1875), L. R. 20 Eq. 155; 44 L. J. Ch. 718.

(*l*) *Re Scott* [1903], 1 Ch. at p. 3; 72 L. J. Ch. 20, following *Re Lacon* [1891], 2 Ch. 482; 60 L. J. Ch. 403; and preferring the view in *Taylor* v. *T.*, *supra*, to that in *Boyd* v. *B.*, *supra*, and in *Blockley* v. *B.* (1885), 29 Ch. D. 250; 54 L. J. Ch. 722.

title of a purchaser from the customary tenant, but equitable interests in copyholds devolved on the personal representatives: *Re Somerville and Turner* [1903], 2 Ch. 583; 72 L. J. Ch. 727. Probate was not granted to the devisee of the whole estate, but letters of administration with the Will annexed had to be taken out in the usual way: *Re Pryse* [1904], P. 301; 73 L. J. P. 84. Real estate was liable in the same way as personal estate for the costs of a probate action: *Re Vickerstaff* [1906], 1 Ch. 762; 75 L. J. Ch. 419; but costs exclusively occasioned by the administration of real estate had to be borne by the real estate.(m) In cases not coming within the L. T. Act, 1897, the probate of a Will might be produced in court to establish a devise of real estate upon certain conditions: Court of Probate Act, 1857, ss. 61–63.

Old law.

The Ad. of E. Act, 1925, in regard to deaths after 1925, is wider in scope than the L. T. Act, 1897, for as there are no copyholds, all land whether freehold or leasehold will vest in the personal representatives. The Act places leaseholds on the same footing as freeholds and extends to trust and mortgage estates, which were formerly dealt with by Conv. Act, 1881, s. 30, as amended.

Ad. of E. Act, 1925, wider in scope.

In some cases probate or administration may be dispensed with in regard to pure personalty, but after 1925 there is no dispensing power if the testator or intestate had land whether freehold or leasehold: Ad. of E. Act, 1925, s. 53 (2).

Representation dispensed with, when.

If a sole or surviving executor, who has proved, dies, having himself by Will appointed an executor, the latter becomes an executor of the original testator; if the first executor dies intestate, or without having proved the Will, his representative does not represent the original testator, but letters of administration *de bonis non* with the Will annexed of the original testator must be taken out. In like manner, if A. dies intestate, and B. takes out letters of administration to his estate and afterwards dies, the executor or administrator of B. does not represent A., but new letters of administration *de bonis non* of A. must be taken out.

Transmission of representation.

If two or more persons are appointed executors and all prove the Will, the representation passes to the executor of the last survivor.

(m) *Re Jones* [1902], 1 Ch. 92; 71 L. J. Ch. 6; *Re Betts* [1907], 2 Ch. 149; 76 L. J. Ch. 463.

The statute law on this subject is now set out in Ad. of E. Act, 1925, s. 7.

Effect of renunciation by executor.

If an executor renounces probate of a Will, or dies without having taken probate, or does not appear on a citation to take probate, the right of such person in respect of the executorship ceases: Ad. of E. Act, 1925, s. 5. The representation to the testator and the administration of his effects devolves and will be committed in like manner as if such person had not been appointed executor. But the court will in some cases allow a renunciation to be retracted: *In b. Stiles* [1898], P. 12; 67 L. J. P. 23; in this case a memorandum of the subsequent probate must be endorsed on the original probate or administration; the new grant will take effect without prejudice to previous dealings, notices, &c.: Ad. of E. Act, 1925, s. 6.

Probate of Will in exercise of power.

Probate is necessary of a Will made in execution of a power, but a Will merely appointing a guardian need not be proved: *In b. Morton* (1864), 3 Sw. & Tr. 422; 33 L. J. P. 87.

Public Trustee.

The court can appoint the Public Trustee to be administrator notwithstanding the existence of relations of the intestate. Security is not required from the Public Trustee when appointed: Non-Contentious Probate Rules, 1925, r. 114.

Administration bonds

As to administration bonds and for the power to dispense with sureties in proper cases, see Jud. Act, 1925, s. 167, and rules thereunder.

SECT. XIV.—*Death Duties.*

The death duties are (1) estate duty: See Webster-Brown, 4th ed., 1; (2) legacy duty: Dymond, 4th ed., 198; (3) succession duty.

Settlement Estate Duty was abolished by the Fin. Act, 1914, s. 14, but see *Att.-Gen.* v. *Smith* [1923], 2 K. B. 531; 92 L. J. K. B. 922.

Estate and Succession Duties.

Estate duty payable on all property passing on death at graduated rates.

The Acts imposing and regulating estate duty are the Fin. Acts, 1894, 1896, 1898, 1900, 1907; Fin. (1909-10) Act, 1910; Fin. Act, 1912, s. 9; Fin. Act, 1914, ss. 12 to 16, and 18 and the 1st and 2nd Schs.; Death Duties (Killed in War) Act, 1914; The American Loan Act, 1915; Finance (No. 2) Act, 1915; Fin. Acts, 1916, 1917, 1918, 1919; War Loan Act, 1919; Fin. Acts, 1921, 1922, 1923, 1924 and 1925. Estate duty is payable upon the principal value of all property, real or personal, settled or not settled, which passes on the death of a person, at the following graduated rates: Fin. Act, 1894, s. 1; Fin. Act, 1925, s. 22; these rates are set out in the 4th Sch. to the Fin. Act, 1925.

Scale of Rates of Estate Duty.

Principal Value of the Estate.				Rate per cent. of duty.
	£		£	
Exceeding	100	and not exceeding	500	1
,,	500	,, ,,	1,000	2
,,	1,000	,, ,,	5,000	3
,,	5,000	,, ,,	10,000	4
,,	10,000	,, ,,	12,500	5
,,	12,500	,, ,,	15,000	6
,,	15,000	,, ,,	18,000	7
,,	18,000	,, ,,	21,000	8
,,	21,000	,, ,,	25,000	9
,,	25,000	,, ,,	30,000	10
,,	30,000	,, ,,	35,000	11
,,	35,000	,, ,,	40,000	12
,,	40,000	,, ,,	45,000	13
,,	45,000	,, ,,	50,000	14
,,	50,000	,, ,,	55,000	15
,,	55,000	,, ,,	65,000	16
,,	65,000	,, ,,	75,000	17
,,	75,000	,, ,,	85,000	18
,,	85,000	,, ,,	100,000	19
,,	100,000	,, ,,	120,000	20
,,	120,000	,, ,,	140,000	21
,,	140,000	,, ,,	170,000	22
,,	170,000	,, ,,	200,000	23
,,	200,000	,, ,,	250,000	24
,,	250,000	,, ,,	325,000	25
,,	325,000	,, ,,	400,000	26
,,	400,000	,, ,,	500,000	27
,,	500,000	,, ,,	750,000	28
,,	750,000	,, ,,	1,000,000	29
,,	1,000,000	,, ,,	1,250,000	30
,,	1,250,000	,, ,,	1,500,000	32
,,	1,500,000	,, ,,	2,000,000	35
,,	2.000,000			40

The increases in the scale set out in the 4th Sch. to the Fin. Act, 1925, over that contained in the Fin. Act, 1919, do not affect purchasers or mortgagees, for value, of interests in expectancy within the meaning of Pt. I of the Fin. Act, 1894, provided the sale or mortgage was made before the 28th April, 1925.

Purchasers and mortgagees protected from increased rates.

In the case of a mortgage made before that date any higher duty payable by the mortgagor ranks as a charge subsequent to that of the mortgage: Fin. Act, 1925, s. 22.

Agricultural values.

Under s. 23 of the Fin. Act, 1925, estate duty payable in respect of agricultural property is chargeable on the agricultural value at the rate given in the Fin. Act, 1919.

Authorities on estate, succession and legacy duty.

The statutes and authorities relating to estate duty, succession duty and legacy duty will be found in Webster-Brown, 4th ed.

The statutes and authorities relating to succession duty will be found in Dymond, 4th ed., pp. 270, *et seq.*, and 366, *et seq.*; these Acts have been amended by the Fin. Act, 1925, s. 24; those relating to legacy duty will be found in Dymond, pp. 198, 352; statutes and authorities relating to both duties from 1894 are also contained in Webster-Brown, 4th ed.

New points.

The following are some points which have arisen since the publication of the 21st edition of this work, in addition to the points already noted:—

Estate duty on timber.

Under the Fin. Act, 1912, s. 9 (which repeals the first paragraph of s. 61 (5) and s. 19 of the Fin. (1909-10) Act, 1910), the value of timber, &c., is not to be taken into account in estimating the principal value of the estate or the rate of estate duty, but estate duty at the rate payable on the rest of the estate is to be paid on the net proceeds of sale of the timber when felled.

Estate and succession duties on heirlooms.

Where heirlooms and other property are subject to the same settlement, estate and succession duty payable in respect of the heirlooms may be paid out of capital money arising from such other property: *Re E. of Egmont's S. E.* [1912], 1 Ch. 251; 81 L. J. Ch. 250.

National, &c., interest.

Where heirlooms have been certified to be of national, scientific, historic or artistic interest under the Fin. Act, 1896, s. 20, as extended by Fin. (1909-10) Act, 1910, s. 63, no part of the testator's estate need be set aside to provide for the duties arising on a sale of the heirlooms: *Re Swaythling* (1912), 57 Sol. J. 173.

Estate duty on goodwill in a partnership.

Estate duty was held not to be payable on the devolution under partnership articles of a share in a partnership where the beneficiaries undertook the obligations and covenants of the partnership: *Att.-Gen.* v. *Boden* [1912], 1 K. B. 539; 81 L. J. K. B. 704.

Estate duty on advowsons.

Estate duty is not payable in respect of an advowson sold by a tenant for life after the death of a previous tenant for life: *Att.-Gen.* v. *Peek* [1913], 2 K. B. 487; 82 L. J. K. B. 767.

Fin. Act, 1914, s. 13. Reduction of duties; small margins.

The full amount of estate duty, where the margin above the limit of each step is small, is reduced, so that the additional duty attributable to the higher rate is never to exceed the sum by which the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

Example.

Thus on an estate of £12,500 duty is chargeable at the rate of 5 per cent.(n) =£625.

On any greater estate up to £15,000 duty is chargeable at 6 per cent.; therefore on an estate of £12,600 estate duty would, under the existing scale, amount to £900, *i.e.*, £275 more than if the estate were only £12,500 in value.

The effect of the Fin. Act, 1914, s. 13, is to reduce the amount of estate duty payable in the above instance to £625 + £100 = £725.

Reduction of legacy and succession duty when estate duty paid.

A reduction is also made in the amount of legacy and succession duty payable on estates the net value of which is over £1,000 and on which estate duty is payable.

Estate duty payable though settlement estate duty has been paid.

Husband and wife, exemption.

The Fin. Act, 1914, s. 14, abolished the exemption from estate duty given by the Fin. Act, 1894, ss. 5 (2), 21 (1), 23 (16), except where the two deceased persons had been parties to a marriage; settlement estate duty was also abolished.

Property not passing to executors "as such."

Estate duty is a charge on property in respect of which it is payable where such property did not under the old law pass to the executors as such.(o)

Though by the Ad. of E. Act, 1925, ss. 1 and 3, land (including settled land) passes to personal representatives, this does not free the land from the charge: *ib.*, s. 53 (3).

Allowances for and repayment of settlement estate duty.

Settlement estate duty, if already paid, in respect of property upon which ordinary estate duty becomes payable by reason of the Fin. Act, 1914, is allowed against ordinary estate duty upon the first occasion on which it is payable.

If the settlement estate duty exceeds the estate duty payable the excess will be refunded: *Re Booth* [1916], 1 Ch. 349; 85 L. J. Ch. 249.

Quick succession.

The Fin. Act, 1914, s. 15, gives relief from estate duty in the case of quick successions.

(n) See Finance Act, 1925, 4th Sch.

(o) *Re Palmer* [1916], 2 Ch. 391; 85 L. J. Ch. 577; see also *Re Hatch* [1917], 86 L. J. Ch. 454; *Re Stoddart* [1916], 2 Ch. 444; *Re Tinkler* [1917], 1 Ch. 242; 86 L. J. Ch. 177; *Re D'Oyly* [1917], 1 Ch. 556; 86 L. J. Ch. 373; *Re Eve* [1917], 1 Ch. 562; 86 L. J. Ch. 396; *Re Parker*, 86 L. J. Ch. 766; *Re Hall-Dare* [1916], 1 Ch. 272; 85 L. J. Ch. 365.

Securities duty free.

The Fin. (No. 2) Act, 1915, gives the Treasury power to issue securities free of taxation: s. 47.

It also abolished the necessity for re-sealing grants in the case of Government Stock: s. 48.

The Fin. Act, 1916, gives exemption from taxation to certain municipal securities issued in America: s. 63.

The Fin. Act, 1917, gives power to transfer war stock and bonds in satisfaction of death duties: s. 34.

Interest on arrears.

The Fin. Act, 1919, increases the rate of estate duty: s. 29. Interest on unpaid duty is increased to 4 per cent.

Gifts to National Gallery, &c.

The Fin. Act, 1921, s. 44, exempts from liability for death duty under the Fin. Act, 1894, s. 20, as amended by the Fin. (1909–10) Act, 1910, s. 63, the proceeds of sale of objects of national, &c., interest given to the National Gallery, British Museum, and certain other institutions.

Death duties (killed in war).

The relief from death duties of the estates of persons killed in war, given by the Fin. Act, 1900, s. 14, is considerably extended by the Death Duties (Killed in War) Act, 1914, and the Fin. (No. 2) Act, 1915, s. 46.

The Fin. Act, 1917, s. 29, gives remission of death duties in cases of members of crews of vessels killed in war.

The Fin. Act, 1919, s. 31, extends the period during which relief from death duties may be given.

The Fin. Act, 1921, s. 43, extends this exemption to the cases of persons killed during the disorder in Ireland.

Provisions applicable to the Death Duties generally.

Accounts to be delivered to Commissioners.

Personal representatives, trustees, tenants for life, and other persons accountable for death duties, see L. P. Act, 1925, s. 16, extending the class of persons accountable for duties affecting land,(*p*) are bound to present accounts with full particulars to the Commissioners, and are liable to penalties for not doing so: S. D. Act, 1853, ss. 45–49; Fin. Act, 1894, s. 8, sub-ss. (5), (6).

Receipts and certificates to be given by Commissioners for succession duty.

The Commissioners are bound to deliver stamped receipts for succession duty, and also a certificate of payment, to any person interested in the property affected by the duty who applies for them. Every receipt and certificate, purporting to be in discharge of the whole duty payable in respect of any succession or any part thereof, exonerates a purchaser in good faith for valuable

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(*p*) For the corresponding provision affecting registered land: L. R. Act, 1925, s. 73.

consideration and without notice from such duty, notwithstanding any suppression or concealment in the account; no purchaser in good faith for valuable consideration under a title not appearing to confer a succession is subject to any duty to which such property may be chargeable by reason of any intrinsic circumstances of which he had not notice at the time of the purchase.(q)

Certificates of discharge of death duty.

The Commissioners, on being satisfied that the death duty has been or will be paid in respect of any property, are bound, if required by the person accounting for the duty, to give a certificate to that effect, which will discharge such property from any further claim for estate duty and will operate as an authority to cancel any land charge registered in respect of the duty: Fin. Act, 1894, s. 11; extended by L. P. Act, 1925, s. 16 (7).

Commissioners may accept compositions for duty.

The Commissioners may receive succession duty in advance and allow discount thereon, and they may, as regards interests in expectancy, and also in cases where difficulties arise from the complicated nature of the interest of the different persons or other causes, accept composition for any of the death duties.(r)

Capital money and personal estate settled with land.

Capital money settled with land, and personal estate settled on the same trusts as the proceeds of sale of land held on trust for sale may be applied in discharging the duties attributable to any interest in the land: L. P. Act, 1925, s. 18 (1).

Recoupment by persons liable.

When, independently of that sub-section it could not be so applied, it must be repaid with interest by the person liable; his interest in the settled property is charged with the repayment of the instalments and interest, and the trustees may recover any excess repayable by the Commissioners: *ib.*, s. 18 (2).

Interest.

Arrears of death duties bear interest at the rate of 4 per cent. per annum: Fin. Act, 1896, s. 18; as amended by the Fin. Act, 1919, s. 30.

Liability to death duty to cease after a specified period.

No person can be made liable for payment of any death duty after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable where such account was in all respects a fair and true account, and contained all the facts material to be known by the Commissioners for the ascertainment of the rate and amount of duty, and no trustee, or personal representative is, after the expiration of such six years, liable for such duty, if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief: Cust. Act, 1889, s. 14; Fin. Act, 1894, s. 8 (2).

(q) S. D. Act, 1853, ss. 51, 52; *Howe* v. *Lichfield* (1867), L. R. 2 Ch. 155; 36 L. J. Ch. 313.

(r) S. D. Act, 1853, ss. 39–41; Cust. Act, 1881, s. 43; Fin. Act, 1894, ss. 12, 13.

Purchasers and mortgagees of land exonerated after a specified period.

The claim of the Crown to succession duty or estate duty cannot be enforced against a purchaser or mortgagee of land after the expiration of six years after notice to the Commissioners of the fact that the succession has accrued, or from the date of the payment of the first instalment of duty, or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to duty: Cust. Act, 1889, s. 12; Fin. Act, 1894, s. 8 (2).

General protection of purchasers, &c., for money's worth.(s)

If the charge for duties attaches after 1925, a purchaser, mortgagee or lessee for money's worth of a legal estate is not affected by the charge unless it is protected by the registration of a land charge: L. P. Act, 1925, s. 17. The person who makes title and the proceeds remain liable for the duty: s. 17 (2).

On a sale, &c., all the duties become payable.

On a conveyance of a legal estate by way of sale, exchange or legal mortgage (this includes a charge by way of legal mortgage but not a mortgage by deposit) all the duties payable in respect of the land dealt with become immediately payable and carry interest at 4 per cent. from the date of the conveyance. But if larger duties are thereby paid than would have been recoverable had the payments by instalments continued, then the excess will be refunded: s. 17 (3).

Foreign property.

Moveable property situated abroad is not subject to estate duty if the deceased is domiciled abroad, unless the Will effects a disposition which would have attracted succession or legacy duty before the Fin. Act, 1894, *e.g.*, a Will in English form with English trustees will attract duty on the death of the tenant for life, irrespective of the situation of the property or domicil of the beneficiaries: *Re Cigala* (1878), 7 Ch. D. 351; 47 L. J. Ch. 166; *cf. A.-G.* v. *Johnson* [1907], 2 K. B. 894; 76 L. J. K. B. 1150. As to situation of insurance policies, see *New York, &c., Co.* v. *Public Trustee* [1924], 2 Ch. 101; 93 L. J. Ch. 449; *cf. Haas* v. *Atlas Co.* [1913], 2 K. B. 209; 82 L. J. K. B. 506.

SECT. XV.—*The Preparation of Wills.*

Hints on drafting Wills.

The points to be attended to in the preparation of a draft Will are sufficiently indicated in the notes to the Forms and

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(s) As to registered land, see L. R. Act, 1925, s. 73; and as to registration of Inland Revenue Charges: L. C. Act, 1925, s. 10, Class D (i).

Precedents which follow, but it cannot be too often repeated that, as the law at present stands, the preparation of a draft Will is one of the most difficult tasks which the draftsman has to encounter. Wills can be shortened, in some cases, by references to the Statutory Will Forms, 1925, prescribed by the Lord Chancellor under L. P. Act, 1925, s. 179, and printed on pp. 659, *et seq.*, *infra.* No doubt if these forms are adopted widely in practice, further additions can be prescribed with a view to shortening Wills. When these forms are referred to, some short description should, for the guidance of the intending testator, be given of the effect of the form; the testator cannot be expected to possess a print of the forms, and will desire to know the nature of the machinery which he is incorporating in his Will, and may wish to see a print.

Statutory Will Forms, 1925.

Until a more generous use is made of the power to prescribe forms to which a testator may refer, the draftsman has either (except in simple cases) to decide to work out at some length the wishes of his testator, guarding against the various pitfalls and thereby producing a document which few testators can hope to understand, or to give everything to the executors and direct them to work out the scheme after the testator's death.

Wills made after 1925 can be shorter.

Independently of the use made of the Statutory Will Forms, drafts can be shorter after 1925 than under the old law, for the additional powers given by the T. Act, 1925, and the Ad. of E. Act, 1925, to trustees and personal representatives, and those given by the S. L. Act, 1925, to tenants for life and statutory owners, which are also made exercisable by trustees for sale (L. P. Act, 1925, s. 28) and by personal representatives (Ad. of E. Act, 1925, s. 39) render unnecessary a considerable amount of machinery.

Whether realty or personalty forms are to be used.

Before 1926 the first matter was to decide whether the Will was to be a realty or personalty Will; if the property was to be enjoyed in succession by single owners, then the realty forms were employed; if the property was to be divided among one or more classes of persons, whether subject or not to a life interest, then the personalty forms were employed. Sometimes it was desired to settle the land strictly and to give the personalty among a class of persons. Usually, however, it was considered best to make the residuary personalty devolve with the land, and to provide for the younger children by means of a portions term.

To a large extent these considerations remain applicable after 1925, but further points become material. In the case of small estates, a trust for sale is preferable. Thus, if the management of land is to be vested in trustees, this can be done by means of a trust for sale, even though the property is to be settled in succession on single owners, for the power to entail personal estate in the same way as land (L. P. Act, 1925, s. 130) now renders this possible. By effecting a strict settlement in this way a succession of vesting instruments is rendered unnecessary; on the other hand, it will seldom be possible to obtain trustees who would be willing to take over the active management of a large estate, even though they can delegate (*ss*) the powers to lease and accept surrenders (L. P. Act, 1925, s. 29; these powers can be extended) to the tenant for life of the proceeds of sale. Moreover, tenants for life generally prefer to keep the powers in their own hands. It follows that, as a rule, estates of any size will generally be settled as land without the interposition of a trust for sale.

Strict settlement by trust for sale.

Realty Wills.

In realty Wills the freeholds and leaseholds should be directed to be held by the tenant for life or statutory owners on the requisite trusts; heirlooms should be given to trustees on corresponding trusts; personal estate can be directed to be held as capital money arising from the settled land: S. L. Act, 1925, s. 78; it is no longer necessary that it should be made liable to be laid out in the purchase of land to be conveyed and settled on the same trusts as the freeholds. It will generally be expedient that land should be devised to the person entitled to have a vesting assent made in his favour on the requisite trusts. If preferred, it can be devised to the executors on trust to execute the requisite vesting instruments. Whatever course is adopted a devise can only pass an equitable interest. Legacies and portions and the payment of debts and duties will be provided for by means of a term of years limited in trust for the trustees. Though the term will take effect in equity, it gives a better protection than a mere charge: S. L. Act, 1925, s. 16, and see Ad. of E. Act, 1925, s. 40. Moreover, it furnishes useful machinery for showing the rights and priorities of the portioners. Annuities will be provided by limiting rentcharges in trust for the annuitants. Trustees (generally being the same persons as the executors) will be appointed for the purposes of the S. L. Act, 1925. Trustees so appointed will automatically have the powers of management

To whom land should be devised.

Legacies and portions.

Portion terms.

Annuities.

S. L. Act trustees.

Management during a minority or pending a contingency.

(*ss*) This power to delegate can be extended to all the powers provided that nothing is done to authorise the receipt of capital money by persons other than the trustees for sale.

conferred by S. L. Act, 1925, s. 102, which, as regards management, takes the place of Conv. Act, 1881, s. 42.

Maintenance and accumulation of surplus income.

Provision is made by T. Act, 1925, s. 31, for the maintenance of an infant and the accumulation of surplus income.

If the infant attains twenty-one or marries and his interest in the income is a vested interest, or if he on attaining twenty-one or on marriage becomes entitled to the property from which the income arose, either in fee simple (absolute or determinable), or absolutely, or for an entailed interest, the accumulations will (subject to any settlement made under the Infant Settlements Act) go to him absolutely, and he can give a receipt therefor. After his marriage he can give a receipt for income though still an infant: L. P. Act, 1925, s. 21.

Destination of accumulations.

In all other cases, though the infant may have had a vested interest, the accumulations will go with the capital of the property from which it arose; if the property is settled land it will go as capital money arising therefrom. Thus, after 1925, it is unnecessary to give any express directions as to the destination of accumulations.

Contingent interests.

This section (T. Act, 1925, s. 31) applies to contingent interests if the limitation, either under the general law or under L. P. Act, 1925, s. 175, carries the intermediate income.

Vested annuities.

It also applies to vested annuities, but in that case the accumulations belong to the infant or his estate. The section applies subject to any contrary intention expressed: *ib.*, s. 69 (2); but it only applies to trusts coming into operation after 1925.

Statutory owners during a minority.

An equitable life interest, or entailed interest, can be given to an infant, but during the minority his co-tenant for life of full age (if any) will be the estate owner trustee of the land: S. L. Act, 1925, s. 19. If there is no tenant for life of full age, then the personal representatives in whom the settled land is vested, or the S. L. Act trustees, as the statutory owners, will have the powers of a tenant for life: s. 26. This section applies where two or more infants are beneficially entitled in possession to the fee simple or a term of years absolute, till one of them attains full age.

Implied trust for sale.

Where an infant is so entitled jointly with a person or persons of full age, then L. P. Act, 1925, s. 19 (2), applies, and the person or persons of full age hold the legal estate on the statutory trusts (s. 35, implied trust for sale); see also, as to the transitional provisions affecting infants, *ib.*, 1st Sch., Pt. III, and S. L. Act, 1925, 2nd Sch., para. 3.

Personalty Wills.

In personalty Wills, after giving the legacies, both immediate and reversionary (it is better not to encumber the trusts of the residue with the payment of future sums), and annuities, and providing, generally by reference to the Statutory Will Forms, for funds to be set aside to answer the annuities, the mixed residue will be given, again by reference to the Statutory Will Forms, on trust for sale with full power to postpone, and there must, unless the Statutory Will Form No. 8 is incorporated, be a direction that reversionary interests are not to be sold except for special reason, and that the income of the personal estate, however invested, must be treated as income from date of death. Also, unless Form No. 8 is incorporated, to avoid the costs of an apportionment, the legacies and the duty thereon should be made primarily payable out of the personal estate. There should be a trust of the rents and profits until sale and, if desired, additional powers to manage the land can be inserted when required.

Lists of forms.

Lists of Forms precede both Wills (Personal) and Wills (Real) and a glance through these lists before the draft is commenced will probably result in a saving of time. The list of the Statutory Will Forms should also be inspected to see which of them can be conveniently incorporated.

Construction.

It will be noted that in Wills coming into operation after 1925, " month " means calendar month ; " person " includes a corporation ; the singular includes the plural and *vice versa*, and the masculine includes the feminine and *vice versa*, unless the context otherwise requires : L. P. Act, 1925, s. 61.

DIVISION V.

WILLS (PERSONAL).

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PART I.

The Statutory Will Forms, 1925. Dated August 7, 1925.

I, George Viscount Cave, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 179 of the Law of Property Act, 1925,(*a*) and every other power enabling me in that behalf, hereby prescribe and publish the forms hereinafter contained as forms to which a testator may refer in his will and give the following directions as to the manner of reference.

Dated the 7th day of August, 1925.

Cave, C.

STATUTORY WILL FORMS.

1. The forms hereinafter contained may be cited as the Statutory Will Forms, 1925, and are divided into two groups called Part I and Part II respectively. **Short title.**

2. The Forms in Part I may be incorporated in a Will by a general reference to that Part, and the Forms in Part I and Part II or any of them may be incorporated in a Will in manner indicated in the Schedule hereto or in any other manner indicating an intention to incorporate them, and in the case of Forms in Part II also indicating what property or disposition is to be affected thereby. **Manner of application.**

(*a*) 15 Geo. 5, c. 20.

Note.—These forms are intended to apply only in the case of Wills taking effect on or after the 1st day of January, 1926.

Interpretation.

3. (1) In any form when incorporated in a Will—

(i) The provisions thereof shall have effect subject to the express provisions of the will;

"Disposition."

(ii) "Disposition" means a devise, bequest, and a testamentary appointment, whether in exercise of a general or special power and includes a disposition under the statutory power to dispose of entailed interests by Will; "dispose of" has a corresponding meaning; and references to a testator's property include property which he disposes of in exercise of a power;

"The trustees."

(iii) "The trustees" mean the trustees appointed by the testator, either generally or for a specific purpose, as the case may require, and the persons who by appointment by the court or otherwise become the trustees, and include his personal representatives when acting as his trustees;

"Authorised investments."

(iv) "Authorised investments" mean investments authorised by the Will creating the trust, for the investment of any money subject to the trusts of the Will, or by law.

Construction by reference to L. P. Act, 1925.

(v) Other words and expressions have the same meanings as in the Law of Property Act, 1925.(*aa*)

FORMS.

PART 1.

FORMS WHICH MAY BE APPLIED EITHER GENERALLY OR BY SPECIFIC REFERENCE.

Form 1.

Confirmation of settlements.

I confirm every settlement of property made by me which is subsisting at my death, and subject to any express provision to the contrary in my Will, the provisions made by my Will for the benefit of persons beneficially interested under any such settlement, shall be in addition to, and not in satisfaction of, those made, or covenanted to be made by me in such settlement.

Form 2.

Meaning of "personal chattels."

(1) "Personal chattels" shall mean "carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament (including wearing apparel), also musical and scientific instruments and apparatus, wines, liquors,

Definitions.

(*aa*) See s. 205 for definitions; *e.g.*, "Will" includes "codicil."

and consumable stores, but shall not include any chattels used at my death for business purposes, nor money or securities for money."

(2) But a general disposition of personal chattels shall take effect subject to any specific disposition.

Form 3.

Inventories and provisions respecting chattels.

(1) An inventory of chattels given by my Will, otherwise than by way of absolute gift, shall be made in duplicate; one part shall be retained by the trustees and the other part shall be delivered to the person of full age for the time being entitled to the use or possession of the chattels, in this clause called the "usufructuary."

Receipts.

(2) A receipt shall be signed by the usufructuary, at the foot of the inventory retained by the trustees.

(3) The inventory delivered to the usufructuary shall, if he so requires, be signed at the foot thereof by the trustees.

(4) On any change of the right to the use or possession of the chattels, a new receipt shall be signed by the usufructuary at the foot of the inventory retained by the trustees.

Alteration of inventories.

(5) Where, by reason of the exercise of any power to sell, exchange, purchase, alter the fashion of, or otherwise deal with the chattels, or of any destruction or loss of any chattel, the inventories become inaccurate, the inventories shall be altered and re-signed, or new inventories shall, if convenient, be made and signed.

(6) The trustees may, at their discretion, exclude from an inventory, any chattels which, by reason of their trifling value or wearing out nature, they may consider ought to be so excluded.

Protection of trustees.

(7) Where the chattels have been delivered to the usufructuary and a receipt is given therefor, the trustees, so long as the usufructuary remains entitled to the use of the chattels, shall not be liable in any way—

(a) for any unauthorised disposition thereof or dealing therewith;

(b) to see to the insurance (so far as the same are capable of being insured) repair, or safe custody of the chattels,

unless and until required, in writing, to insure the chattels or to take any proceedings in reference thereto, by some person beneficially interested in the chattels or by his guardian, committee or receiver, and unless also due provision be made, to the satisfaction of the trustees, for the payment of the costs of insurance or of any proceedings required to be taken.

Custody, insurance, repair.

(8) Where there is no person of full age and capacity entitled

to the use of the chattels, the trustees may, during the period of disability, make such arrangements for the safe custody, repair, insurance and use of the chattels as, having regard to the circumstances of the case, they may in their absolute discretion, think expedient.

Form 4.

Legacies to charities.

The receipt of the treasurer or other proper officer of a charitable, benevolent or philanthropic institution, society or body of persons (corporate or incorporate), to which a legacy is given by my Will shall be a complete discharge of my personal representatives.

Form 5.

Directions respecting annuities.

The following provisions shall have effect in regard to any annuities or annuity given by my Will :—

(1) The trustees may, and (if so requested by or on behalf of any person beneficially interested in the property affected), shall, as soon as may be after any annuity commences to accrue, set apart in their names or under their control authorised investments to provide a fund the income whereof will be sufficient, in the opinion of the trustees, to produce an annual sum equal to the amount of the annuities for the time being payable under my Will.

(2) The income or, if necessary, the capital of the fund so appropriated, shall be applied in payment of every subsisting annuity.

(3) Until a fund shall be so appropriated, my residuary estate shall stand charged with the payment ot every subsisting annuity, but, after appropriation, the said estate shall be thereby discharged therefrom.

(4) The appropriated fund, or, where more than one annuity is bequeathed, such parts thereof as, in the opinion of the trustees, may not be required to answer any subsisting annuity, shall, on the cesser of an annuity, fall into my residuary personal estate.

(5) Accordingly, as each annuity ceases, the trustees may treat as part of my residuary personal estate, the whole or a corresponding part of the appropriated fund, as the case may require, retaining only such part thereof (if any) as may, from time to time, in their opinion, be sufficient to produce, by the income thereof, an annual sum equal to the amount of any subsisting annuities.

(6) Any surplus income of the appropriated fund shall be applied in the same manner as the income of my residuary personal estate.

(7) The trustees may, at their discretion, vary any of the investments for the time being representing the appropriated fund for other authorised investments.

(8) In this clause "annuity" includes any periodical payment (not being a rentcharge) for life or other terminable interest.

Form 6.

Power of appropriation.

(1) The power of appropriation conferred by the Administration of Estates Act, 1925, shall be exercisable by the trustees, without any of the consents made requisite by that Act.

(2) So far as practicable, the trustees shall give one month's notice, at least, of an intended appropriation, to the persons whose consent would, but for this clause, be required under that Act; but a purchaser shall not be concerned to see or inquire whether any such notices have been given.

(3) In this clause "trustees" includes my personal representatives.

PART 2.

FORMS WHICH CAN ONLY BE APPLIED BY SPECIFIC REFERENCE.

Form 7.

Trusts of a settled legacy.

Any legacy of money or investments to which this clause is applied shall be subject to the following provisions:—

To invest.

(1) The trustees shall stand possessed of the legacy upon trust to invest the same in their names or under their control in any authorised investments, with power, at the like discretion, to vary the investments thereof for others of a like nature.

Legatee for life.

(2) The trustees shall stand possessed of the legacy, and of the investments representing the same and all statutory accumulations, if any, of income thereof, hereinafter included in the description of such legacy upon trust to pay the income thereof to the legatee during the life of the legatee.

(3) After the death of the legatee, the capital and income of the legacy shall be held—

Power to appoint to issue.

In trust for all or any one or more exclusively of the other or others, of the issue of the legatee, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement, and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as the legatee shall by deed, revocable or irrevocable, or by Will appoint; but so that, under any appointment, a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

In default for children.

And in default of and until and subject to any such appointment—

In trust for all or any the children or child of the legatee, who attain the age of twenty-one years, or marry under that age, and if more than one in equal shares.

Hotchpot.

(4) Any child of the legatee, who, or whose issue, takes any part of the legacy under any appointment by the legatee, shall not, in the absence of any direction by the legatee to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or his issue into hotchpot and accounting for the same accordingly.

Trusts on failure of issue.

(5) If the legatee shall not have any child who, under the trusts in default of appointment hereinbefore contained, attains a vested interest in the legacy, then, subject to the trusts and powers hereinbefore expressed in favour of the legatee and his issue, the legacy and the income thereof and all statutory accumulations, if any, of income shall fall into and form part of my residuary personal estate.

Power to appoint life interest to spouse.

(6) The legatee may, notwithstanding any of the trusts hereinbefore expressed concerning his legacy, from time to time or at any time by deed, revocable or irrevocable, or by Will, appoint to or for the benefit of any spouse who may survive the legatee, during the residue of the life of such spouse or for any less period (and subject or not to any conditions, and with such gifts over, and discretionary or other trusts for the benefit of the spouse and issue of the legatee, as the legatee may think fit), all or any part of the annual income of the legacy of the legatee, or of so much thereof as shall not, before the death of the legatee, have been paid or applied under any power affecting the same.

And, upon any such appointment, the trusts and powers limited to take effect after the death of the legatee, shall take effect subject to the interest limited by any such appointment:

Provided that the power last aforesaid, to appoint by deed, shall not be exercisable by a woman while under coverture.

Form 8.

Administration trusts.

Any property disposed of by my Will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions:—

(1) The property shall be held—

Trust for sale.

(a) as to the real property, if any, including chattels real, upon trust to sell the same, and

(b) as to the personal property, if any, upon trust to call in, sell, and convert into money such part thereof as may not consist of money.

Power to postpone.

(2) The trustees shall have power to postpone such sale and conversion for such a period as they, without being liable to account, may think proper.

Reversionary interests.

(3) A reversionary interest shall not be sold, until it falls into possession, unless the trustees see special reason for sale.

Trust to pay debts, legacies, &c.

(4) The trustees shall out of the net money to arise from the sale and conversion of the property (after payment of costs, and out of any ready money of mine, included in the disposition), pay or provide for

(a) my funeral and testamentary expenses;

(b) my debts, except charges on other property of mine so far as those charges are discharged out of the property primarily charged therewith under the Administration of Estates Act, 1925;

(c) the duties, payable out of capital on my death, and not charged on or primarily payable out of other property;

(d) any other liabilities properly payable out of the property, or the proceeds of sale thereof;

Legacies primarily payable out of personalty.

(e) the legacies (including money directed to be paid by my Will), and annuities bequeathed by me, but so that all legacies and annuities, and the duty on all legacies and annuities bequeathed free of duty, shall be paid primarily out of personal property, if any, included in the disposition.

Trust to invest.

(5) The trustees may invest, in their names or under their control, the residue of the said money, or so much thereof as may not have been distributed, in any authorised investments, with power, at their discretion, to vary such investments for others of a like nature.

Income to be applied as income.

(6) The income (including net rents and profits of real property and chattels real, after payment of rates, taxes, rent, costs of insurance and of repairs and other outgoings properly attributable to income) of so much of the property as is not required for the administration purposes aforesaid, shall, however the property is invested, as from my death, be treated and applied as income; and for that purpose any necessary apportionment may be made between capital and income.

(7) Provided that—

Accumulations.

(a) statutory accumulations of income made during a minority, or pending a contingency, or accumulations made under an express trust for accumulation, may be added to capital;

Sinking fund policies, &c.

(b) income may be applied in effecting and maintaining a leasehold sinking fund policy, or may be set aside and invested for providing a fund to answer any liabilities which in the opinion of the trustees ought to be borne by income;

Adjustment of capital and income.

(c) the trustees may in their discretion adjust, in such manner as they shall think fit, having regard to the circumstances of the case, the incidence as between capital and income, of the payments made in due course of administration.

Form 9.

Trusts for spouse for life with power to appoint to issue and gift over to them.

Any property disposed of by my Will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions:—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse, the capital and income of the property shall be held—

(i) In trust for all or any one or more, exclusively of the other or others, of my issue, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement and otherwise, at the discretion of any person or persons and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as my spouse shall, by deed, revocable or irrevocable, or by Will, appoint; but so that, under any appointment, a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

(ii) And in default of and until and subject to any such appointment in trust, in equal shares if more than one, for all or any my children or child who survive me and attain the age of twenty-one years or marry under that age, and for all or any of the issue living at my death who attain the age of twenty-one years or marry under that age, of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share or shares which his or their parent would have taken if living at my death, and so that no issue shall take whose parent is living at my death and so capable of taking.

Hotchpot.

(3) Any person who, or whose issue, takes any part of the property, under any appointment by my spouse, shall not, in the absence of any direction by my spouse to the contrary, take any share in the unappointed part, without bringing the shares appointed to such person or his issue into hotchpot, and accounting for the same accordingly.

Form 10.

Trusts for spouse and issue, without a power of appointment.

Any property disposed of by my Will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions:—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse the capital and income of the property shall be held in trust, in equal shares if more than one, for all or any my children or child, who survive me and attain the age of twenty-one years or marry under age, and for all or any of the issue living at my death, who attain the age of twenty-one years or

marry under that age, of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares, if more than one, the share or shares which his or their parent would have taken if living at my death ; and so that no issue shall take whose parent is living at my death and so capable of taking.

SCHEDULE.

Incorporation of all the Forms in Part I.

All the forms contained in Part I of the Statutory Will Forms, 1925, are incorporated in my Will [subject to the following modifications, namely*].

* Here insert the modifications (if any).

Incorporation of specified Forms from Part I.

The following forms contained in Part I of the Statutory Will Forms, 1925, shall be incorporated in my Will :—

[*Specify those of the following forms which it is desired to incorporate.*]

Form 1 (*Confirmation of Settlements*).
Form 2 (*Meaning of "personal chattels"*).
Form 3 (*Inventories and provisions respecting chattels*).
Form 4 (*Legacies to charities*).
Form 5 (*Directions respecting annuities*).
Form 6 (*Power of appropriation*).

[Subject to the following modifications, namely*
.]

* Here insert the modifications (if any).

Incorporation of specified Forms from Part II.

FORM 7.

Trusts of a Settled Legacy.

Form 7 of the Statutory Will Forms, 1925, is incorporated in my Will, and shall apply to the following legacies*
[subject to the following modifications†].

* Here insert the legacies of money or investments to be settled.
† Here insert the modifications (if any).

FORM 8.

Administration Trusts.

Form 8 of the Statutory Will Forms, 1925, is incorporated in my Will, and shall apply to* [subject to the following modifications†].

* Here insert description of property to be held upon administration trusts.
† Here insert the modifications (if any).

FORM 9.

Trusts for Spouse for life with power to appoint to issue and gift over to them.

Form 9 of the Statutory Will Forms, 1925, is incorporated in my Will, and shall apply to* [subject to the following modifications†].

* Here insert description of the property to be held on trusts for spouse for life with power to appoint to issue and gift over to them.
† Here insert the modifications (if any).

FORM 10.

Trusts for Spouse and issue without a power of appointment.

Form 10 of the Statutory Will Forms, 1925, is incorporated in my Will, and shall apply to* [subject to the following modifications†].

* Here insert description of the property to be held on trusts for spouse and issue without power of appointment.
† Here insert the modifications (if any).

PART II.

SECTION I.

COMMENCEMENT OF WILLS AND CODICILS.

No. 1.
Commencement of Will

I, ——, of ——, hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last Will, which I make this —— day of ——, 19— [in contemplation of my intended marriage with ——, and I declare that this Will shall not take effect unless the said marriage is solemnised within six months from the date hereof (*b*)].

(*b*) See L. P. Act, 1925, s. 177, which prevents a Will expressed to be made in contemplation of a marriage from being revoked by that marriage under Wills Act, 1837, s. 18.

No. 2.

Commencement of codicil.(c)

I, ——, of ——, declare this to be a first [*or* second, &c.] Codicil, which I make this —— day of ——, 19—, to my Will, which is dated the —— day of ——, 19—.

SECTION II.

APPOINTMENT OF EXECUTORS, TRUSTEES AND GUARDIANS AND CONFIRMATION OF MARRIAGE SETTLEMENT.

No. 3.

Appointment of executors and trustees.

(1) I APPOINT ——, of, &c., ——, of, &c., and ——, of, &c. (hereinafter called my Trustees (*d*)), to be the executors and trustees of my Will.

Legacies to trustees and executors.

(2) I BEQUEATH to each of them the said —— who accepts the office of trustee and executor the sum of £—— (*e*) [free of duty].

Appointment of special executors.

(3) I APPOINT the respective persons who at my death shall be the trustees for the purposes of the Settled Land Act, 1925, of any settlement under which I am tenant for life or statutory owner to be my special executors in regard to the settled land vested in me at my death pursuant to that settlement.(*f*)

(*c*) Form No. 84, p. 741, should be used at the end of all codicils.

Devolution of trusts and powers.

(*d*) Under T. Act, 1925, ss. 18, 36 (7), 43, the trusts and powers will be exercisable by the survivors or survivor or the executors or administrators of a last surviving or continuing trustee or other the trustees or trustee for the time being of the Will, but (save where a trust corporation is appointed) there must be at least two trustees to give a receipt under a trust for sale of land: L. P. Act, 1925, s. 27 (2), as re-enacted in L. P. (Amend.) Act, 1926, Sch.; T. Act, 1925, s. 14 (2). There must not be more than four trustees: *ib.*, s. 34; probate or administration will not be granted to more than four representatives in respect of the same property: Jud. Act, 1925, s. 160.

Number of executors and trustees.

There is nothing to prevent probate being granted to a sole executor (of full age), but during a minority or the subsistence of a life interest the court has power (save where the executor is a trust corporation) to appoint an additional personal representative: Jud. Act, 1925, s. 160. Hence in practice not less than two or more than four executors should be appointed in regard to the same property. In the case of an insolvent estate a creditor may be appointed sole administrator though there may be a minority: *Re Herbert* [1926], P. 109.

Legacy to executor.

(*e*) A legacy to an executor has no priority over other legacies, and if there are not sufficient assets his legacy abates rateably: *Duncan* v. *Watts* (1852), 16 Beav. 204. There is a presumption in law that a legacy given to an executor is annexed to his office. Hence if he disclaims or renounces he forfeits the legacy; so also if his appointment as executor is revoked: *Re Russell* (1912), 56 Sol. J. 651. The presumption is not rebutted by the fact that legacies to several executors differ in amounts: *Re Appleton* (1885), 29 Ch. D. 893; 54 L. J. Ch. 954. The presumption does not arise where the gift is of residue: *Re Maxwell* [1906], 1 Ir. R. 386.

(*f*) See Ad. of E. Act, 1925, s. 22 (1). This appointment will be implied if it is not expressly made.

[(4) I DEVISE AND BEQUEATH all my real estate and chattels real which I can dispose of by Will in any manner I think proper, either as beneficially entitled thereto or under any general power (including the statutory power to dispose of entailed property), unto my Trustees, UPON TRUST to give effect by the requisite vesting and other assents to the devises, bequests, trusts and provisions of my Will.(*g*)]

[General gift of land to executors.]

No. 4.

Appointment of guardians.

I APPOINT my Trustees hereinbefore named, [—— and ——,] and the survivors and survivor of them, to be the guardians of my infant children (*h*) and to act jointly with my wife during her life, and after her death with any persons appointed by her, or if none, then alone.

No. 5.

Forms in Pt. I of the Statutory Will Forms to apply.

ALL the forms contained in Part I of the Statutory Will Forms, 1925 (being forms which relate to (1) Confirmation of Settlements, (2) The meaning of "Personal Chattels," (3) Inventories and provisions respecting chattels, (4) Receipts for legacies given to charities, (5) Directions respecting annuities, and (6) Power of appropriation), are incorporated in my Will and shall have effect, so far as applicable.

[No. 5A.

Confirmation of testator's marriage settlement. (*i*)]

[I CONFIRM any settlement made in contemplation of my marriage with my wife, and declare that [subject as hereinafter expressly mentioned (*j*)] the provisions hereby made for her and my children [issue] shall be in addition to and not in satisfaction of those made or covenanted to be made for them by settlement.]

SECTION III.

APPOINTMENTS UNDER SPECIAL POWERS.

No. 6.

Appointment of trust funds under a

IN exercise of the power for this purpose conferred on me by the Will of my mother Jane ——, dated the —— day of ——,

---

(*g*) This is an alternative method to devising land to the person entitled to have an assent; the latter course will generally be better. In any case the land will vest in the executors: Ad. of E. Act, 1925, ss. 1–3. A devise can only pass an equitable interest and the executors are not intended to take beneficially.

Guardians.

(*h*) See Guardianship of Infants Act, 1886; Theobald, 7th ed., 97 *et seq.* A testamentary guardian could only be appointed in the manner provided by 12 Car. 2, c. 24, s. 8; hence could not be appointed by a soldier's Will made under the Wills Act, 1837, as neither that Act nor the Statute of Frauds gave power to appoint a guardian of a soldier's Will: *Re Tollemache* [1917], P. 246; 86 L. J. P. 154. A testamentary guardian may now be appointed by a soldier's Will under the Wills (Soldiers and Sailors) Act, 1918, s. 4.

"Satisfaction."

(*i*) This is not required if Form No. 5 is used. This clause prevents any questions arising under the doctrine of satisfaction, see Theobald, 7th ed., 759 *et seq.*; *cf. Re Hall* [1918], 1 Ch. 562; 87 L. J. Ch. 393; see also note to Form No. 64, p. 724.

(*j*) See Form No. 64, p. 724.

special power conferred by a Will (or Settlement) in favour of particular children.(*k*)

and proved on the —— day of —— [by the Settlement made on my marriage dated the —— day of ——] I appoint that the trustees or trustee for the time being of the said Will [Settlement] shall stand possessed of the —— share in my mother's residuary estate or the investments for the time being representing the same and all other (if any) the money and investments bequeathed by the said Will on trust for the benefit of myself and my issue [the money and investments for the time being held upon the trusts of the said Settlement], IN TRUST [subject to the interest thereby limited in favour of my wife during her life] for such of my daughters as shall be living at my death and attain the age of twenty-one years or marry under that age, and if more than one in equal shares.

No. 7.

Appointment of trust funds under a special power in favour of a husband for life and then to children equally. Variation where a child's share is settled for twenty-one years.

To husband for life.

(1) IN exercise of the powers for this purpose conferred on me by my marriage Settlement, dated the —— day of ——, I appoint that the trustees or trustee for the time being of the said Settlement (hereinafter called the Settlement Trustees) shall after my death stand possessed of all the money and investments for the time being, subject to the trusts thereof (hereinafter called the Settlement Fund), UPON TRUST to pay the income thereof to my husband, if he survives me, during his life, and after his death (as to both capital and income), IN TRUST for all or any my children or child living at my death who attain the age of twenty-one years or, being female, marry under that age, and if more than one, in equal shares [subject as to the share of my son, D. B., to the provisions hereinafter contained].

After his death for children of testatrix.

Proviso that share of son shall be retained upon special trusts against alienation, &c.(*l*)

[(2) (i) I FURTHER appoint that if my son, D. B., survives me, the Settlement Trustees shall retain his share in the Settlement Fund and pay the income thereof to the said D. B. until his death, or until the expiration of a term of twenty-one years from my death,(*m*) or until he shall become bankrupt, or assign or

Election.

Protective trusts.

(*k*) Recitals should, where practicable, be avoided in Wills. It is assumed here that the testator is making provision for his daughters, his sons being otherwise provided for.

(*l*) This clause should only be used in exceptional cases. The object is to protect an improvident son, but the provision cannot be made to apply for more than twenty-one years. A gift to a son of the testator's own property on condition that the son settles his appointed share would more effectually protect him. This would put the son to election, as to which see Theobald, 7th ed., 114, and Article in (1917), 33 L. Q. R., p. 260.

(*m*) This limit is inserted in order to prevent the application of the rule against perpetuities. Protective trusts can be implied under T. Act, 1925, s. 33, but are not properly applicable to the case in the text.

charge the said income, or any part thereof, or do or suffer any act or thing whereby the said income if belonging absolutely to him, or some part thereof, would become vested in or payable to some other person, whichever first happens :

(ii) AFTER the determination of the foregoing trust (hereinafter referred to as the First Trust) the Settlement Trustees shall hold the said share IN TRUST as follows (that is to say) :—

(A) IF the First Trust determines by reason of the expiration of the said term of twenty-one years in the lifetime of the said D. B., then IN TRUST for the said D. B. absolutely ;

(B) IF the First Trust determines by reason of the death of the said D. B. before the expiration of the said term, then IN TRUST for the said D. B. absolutely, as part of his personal estate ;

(C) IF the First Trust determines in the lifetime of the said D. B., and before the expiration of the said term by reason of his bankruptcy or of any such purported alienation as aforesaid, then IN TRUST for my other children or child living at the date of the determination of the First Trust who attain the age of twenty-one years or, being female, marry under that age, and if more than one in equal shares.]

Maintenance.

(3) THE provisions of section thirty-one of the Trustee Act, 1925, shall, during a minority, apply to the foregoing (*n*) appointments.

[Gift of residue of property to husband absolutely.]

[(4) I GIVE the proportionate part belonging to my estate of the income of the Settlement Fund for the current half-year preceding my death [and all other (if any) the property which I have power to dispose of by Will] unto my husband absolutely.**]**

No. 8.

Appointment under a Settlement to children by a first marriage and bequest of testator's residuary estate so as to effect equality between children of both marriages.

(1) IN exercise of the power for this purpose conferred on me by a Settlement dated, &c. (being a Settlement executed in consideration of my marriage with my first wife, Jane ——, deceased), I appoint that the trustees or trustee for the time being of the said Settlement shall stand possessed of the money and investments which shall be held upon the trusts thereof at my death (hereinafter called the Settlement Fund), IN TRUST for such of my children by my first wife, as shall be living at my death and attain the age of twenty-one years, or being

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(*n*) The interests "arise" under the appointment though the power may have been created before 1926; in any case the power would generally authorise provision to be made for maintenance, hence T. Act, 1925, s. 31, can be made applicable.

daughters, marry under that age, and if more than one, in equal shares :(*o*)

Devise, &c., of residuary estate and definition of Trust Fund.

(2) *Devise and bequest of residuary estate on administration trusts and definition of the Trust Fund—Forms Nos.* 46 *and* 49, pp. 704, 708 :

Income of Trust Fund to second wife during widowhood.

(3) *Trust to pay income of Trust Fund* to my second wife, MARY ——, *during her widowhood—Form No.* 51A, p. 709 :

After death or re-marriage of second wife capital and income of Trust Fund to be divided between all children of testator, but so as to give them equal shares taking the Settlement Trust Fund into account.

(4) AFTER the death or second marriage of my second wife (which first happens) my Trustees shall stand possessed of the capital and income of the Trust Fund upon the trusts following (that is to say) :—

(i) UPON TRUST in the first place to raise and pay thereout to each child of mine by my second wife, who survives me and attains the age of twenty-one years, or being a daughter marries under that age, such a sum as shall, in the opinion of my Trustees, be equal to the value of the share in the Settlement Fund of each of my children by my first wife hereinbefore appointed ;

(ii) SUBJECT as aforesaid, the capital and income of the Trust Fund shall be held IN TRUST for all or any my children or child by both marriages who survive me and attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares.

SECTION IV.

SPECIFIC LEGACIES, &c.(*p*)

No. 9.

Bequest of chattels by reference to a Schedule.(*q*)

I BEQUEATH [free of duty] to the persons whose names and addresses are mentioned in the first and second columns of the —— Schedule to my Will the respective chattels, a short description whereof is set opposite to their names in the third column of the same Schedule.

(*o*) This assumes that there are no issue of deceased children to be provided for, see Form No. 59A, p. 715.

Expenses of preservation of chattels.

(*p*) The expenses incurred in the upkeep and preservation of a specific legacy until the executor assents to the bequest are payable by the legatee and not out of residue : *Re Pearce* [1909], 1 Ch. 819 ; 78 L. J. Ch. 484. As to the distinction between specific and general legacies, see *Bothamley* v. *Sherson* (1875), L. R. 20 Eq. 304 ; 44 L. J. Ch. 589.

Position and use of Schedules.

(*q*) This method of dealing with several legacies (see also the Forms, *infra*. relating to pecuniary and charitable legacies and annuities) shortens a Will, and is convenient for the purpose of administration. The schedule must come after the testimonium and before the attestation clause and the testator's signature.

Form of Schedule.

THE —— SCHEDULE.

Particulars of specific legacies.

Name of Legatee.	Address.	Short Description of Chattels.

No. 9A.

Bequest to debtor of principal money and interest with direction against lapse.(r)

I BEQUEATH [free of duty] to C. D., of, etc., all principal money owing by him to me at my death and secured by a Mortgage dated, &c. [*or otherwise as the case may be*] together with all arrears (if any) of interest and all interest accruing due thereon; And I direct my Trustees at the cost of my residuary personal estate to surrender the security by endorsed receipt or otherwise to the said C. D. in like manner as if he had discharged all claims under the said Mortgage [*or* to deliver up any security for the same to the said C. D. to be cancelled]: And I declare that if the said C. D. dies in my lifetime the said legacy shall not lapse (*continue as in Form No.* 22, *p.* 683).

No. 10.

Bequest to wife of "personal chattels" and legacy.

(1) I BEQUEATH to my wife absolutely all my "personal chattels" [free of duty].

(2) I ALSO BEQUEATH to her [free of duty] the sum of £—— to be paid to her immediately after my death and in priority to all other legacies and annuities hereby or by any codicil hereto bequeathed.(s)

No. 10A.

Bequest to wife of furniture, &c.

I BEQUEATH to my wife absolutely [free of duty] all the carriages, horses, harness and stable furniture and effects, and motor cars (*t*) and motor accessories, and all the garden and farming live and dead stock and effects, and all the plate, plated

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Release of a debt by Will.

(*r*) The forgiveness by Will of a debt owing to the testator is a specific legacy: *Re Wedmore* [1907], 2 Ch. 277, 76 L. J. Ch. 486; and as such is liable to legacy duty: *A.-G.* v. *Holbrook* (1829), 3 Y. & J. 114. This bequest would not include any money, which the testator's estate might be called on to pay under a guarantee given by the testator for money due by the debtor: *Re Mitchell* [1913], 1 Ch. 201; 82 L. J. Ch. 121.

(*s*) This assumes that the Statutory Will Forms, Pt. I (see Form 2 thereof), have been incorporated: Form No. 5, *supra*. Form No. 10 will then take the place of Form No. 10A. It is expedient to incorporate the Statutory Forms whenever available, with such additions as may be sufficient to explain the general effect to the testator.

(*t*) See *Re Hall* (1912), 56 Sol. J. 615; and *cf. Re Ashburnham* (1912), 107 L. T. 601; *Re White* [1916], 1 Ch. 172; 85 L. J. Ch. 368.

articles,(*u*) linen, china, glass, books, pictures, prints, furniture,(*v*) jewellery, and articles of household or personal use or ornament, wines, liquors, and consumable stores,(*w*) and other articles and effects of every kind which at my death shall be in or about my dwelling-house [*or* any dwelling-houses occupied by me at my death] or any buildings or grounds occupied by me therewith, but except money or securities for money : And I also bequeath to her [free of duty] the sum of £——, to be paid to her immediately after my death and in priority to all other legacies and the annuities hereby or by any codicil hereto bequeathed.(*x*)

Money legacy.

No. 11.

Gift to wife of articles to be selected by her.

I BEQUEATH to my wife absolutely [free of duty] such of my "Personal chattels" [*or* such of my plate, plated articles, linen, china, glass, books, pictures, prints, furniture and other household effects] as she may within one year from my death select.

No. 12.

Plate, &c., to wife for life, then to son.

Inventory to be made.(*y*)

I BEQUEATH [free of duty] all my plate and plated articles, books, pictures and prints unto my Trustees, UPON TRUST that my Trustees shall permit my wife to use and enjoy the same during her life, and after her death, shall hold the same, IN TRUST for my son —— absolutely : And I direct my Trustees to make an inventory of the articles included in the foregoing bequest [in accordance with the Statutory Will Forms, 1925] [one copy whereof shall be signed by my Trustees and delivered to my

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Plate.

(*u*) "Plate" does not include plated articles : *Holder* v. *Ramsbottom* (1863), 4 Giff. 205 ; *Re Lewis* (1910), W. N. 6 ; see also *Re Zouche* [1919], 2 Ch. 178 ; 88 L. J. Ch. 274.

Furniture; books.

(*v*) "Furniture" does not include trade and tenants' fixtures in an hotel : *Re Seton-Smith* [1902], 1 Ch. 717 ; 71 L. J. Ch. 386. Stamp albums are not included in the word "books" ; *Re Masson* (1917), 86 L. J. Ch. 753 ; as to money see *Re Taylor* [1922], 1 Ch. 569 ; 91 L. J. Ch. 801.

Consumable stores.

(*w*) Consumable stores cannot be made the subject of a gift over unless they form part of stock-in-trade : Theobald, 7th ed., 647 ; and see *Re Robson* [1891], 2 Ch. 559 ; 60 L. J. Ch. 851 ; *Re Craven* (1909), 100 L. T. 284.

Duties.

(*x*) It is right that the widow's immediate legacy should be expressly given priority, as near relationship to the testator does not of itself give priority over other legacies : *Re Schweder* [1891], 3 Ch. 44 ; 60 L. J. Ch. 656. Legacy and succession duty is now payable as between husband and wife : Fin. (1909-10) Act, 1910, s. 58 (2).

Insurance of chattels by Trustees.

(*y*) If Form No. 5 is used the second alternative within square brackets will not be required. In the absence of this direction to the trustees, the tenant for life will have to make the inventory, but is not bound to insure : *Temple* v. *Thring* (1887), 56 L. J. Ch. 767. Trustees may, however (*Re McEacharn* (1911), 103 L. T. 900), insure chattels out of income, see T. Act, 1925, s. 19 ; *Re E. of Egmont* [1908], 1 Ch. 821 ; 77 L. J. Ch. 479.

Application of insurance money.

As to the application of the insurance money : T. Act, 1925, s. 20 ; as to the old law, see *Re Quicke* [1908], 1 Ch. 887 ; 77 L. J. Ch. 523 ; article in (1910) 54 Sol. J. 356, and the *dictum* in *Re Bladon* [1911], 2 Ch. at p. 354 ; 81 L. J. Ch. at p. 118.

wife, and another copy shall be signed by my wife and retained by my Trustees: And my Trustees shall not be bound to see to the preservation of the said articles or as to their insurance, nor be answerable for any loss or injury which may happen thereto during the life of my wife].

No. 13.

Jewels, &c., to daughters to be distributed among them by Trustees.

I GIVE [free of duty] all my jewellery, trinkets, plate, plated articles, linen, china, glass, books, pictures, prints, furniture and household effects unto such of my daughters (*naming them*) as shall survive me, to be fairly and equally distributed according to value among them in such manner as they shall agree, or in case of difference as shall be settled by my Trustees, whose decision shall be final. (*Add if any daughters are infants, and see T. Act*, 1925, *s.* 53, *as to vesting orders*: Any of my said daughters who shall not have attained the age of twenty-one years at my death shall be entitled to give valid receipts for and otherwise deal with and divide the said chattels or any of them in like manner as if she had been of full age at my death.)

No. 14.

Bequest of chattels with request for the distribution thereof in accordance with a memorandum left by testator.(*z*)

I BEQUEATH [free of duty] all my "personal chattels" (*or see previous Forms*), to my wife, and request her to give effect to any wishes I may express in any memorandum signed by me and deposited with my Will or with my papers in regard to the disposal of the said chattels or any of them, but nothing herein or in any such memorandum contained shall operate to create any trust or impose any binding obligation on my wife with respect to the said chattels or otherwise fetter her absolute beneficial interest therein.

No. 15.

Devise of freeholds for infant son giving him absolute power of appointment if he attains full age.

(1) I DEVISE my dwelling-house in which I am now residing, known as ——, together with the pleasure grounds, lands, gardens, outbuildings and appurtenances thereunto belonging or usually held or enjoyed therewith (*a*) [and also the piece of land situated, &c., which I lately purchased from ——, and which is now in the occupation of ——], to my Trustees or other the person or persons who after my death shall become entitled to have an assent made to them or him UPON TRUST for my son

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(*z*) This bequest does not create a binding trust, but is a convenient method of dealing with small articles. If the legatee is provided for by the Will there is every probability of the testator's wishes being carried out. To make a secret trust binding it must be disclosed to the legatee during the testator's lifetime, see Theobald, 7th ed., 73, *et seq.*; *Re Boyes* (1884), 26 Ch. D. 531; 53 L. J. Ch. 654; *Re Falkiner* [1924], 1 Ch. 88; 93 L. J. Ch. 76.

Secret trust.

(*a*) See *Taws* v. *Knowles* [1891], 2 Q. B. 564; 60 L. J. Q. B. 641, which shows the advantage of adding these general words, and *Re Willis* [1911], 2 Ch. 563; 81 L. J. Ch. 8.

F. B. during his life without impeachment of waste, with remainder Upon such trusts and for such purposes generally as the said F. B. (when of full age) shall by any deed or by Will or codicil appoint, and in default of and until and subject to any such appointment UPON TRUST for my Trustees in fee simple Upon the trusts and subject to the powers and provisions hereinafter declared concerning my residuary estate:

Appointment of S. L. Act trustees.(*b*)

(2) MY Trustees are hereby appointed to be the trustees hereof for the purposes of the Settled Land Act, 1925:

Accumulations to fall into residue if the son dies an infant bachelor.

(3) IF the said F. B. dies an infant, and without having been married, then all statutory accumulations made during his minority in respect of the said property and remaining unapplied at his death shall fall into and form part of my residuary estate:

Incumbrances to be discharged.

(4) ALL incumbrances affecting the said property at my death shall be discharged and kept down out of my residuary personal estate and the income thereof in exoneration of the said property and the income thereof :(*c*)

Legacy to discharge death duties.

(5) I BEQUEATH to my Trustees, free of duty, such a sum as in their opinion will be sufficient to discharge all estate and succession duty and the costs of paying the same which may become payable on my death in respect of the property devised by this clause and I direct them to discharge the said duties and costs out of the said legacy in exoneration of the said property.

No. 15A.

Devise of freeholds to wife and direction as to duties.

(1) I DEVISE all my freehold lands, buildings and incorporeal property situated or arising in the county of —— To my wife in fee simple free from any incumbrances affecting the same

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Powers of management of land during minority.

Assent to be postponed.

(*b*) The appointment of S. L. Act trustees gives them powers of management during a minority: S. L. Act, 1925, s. 102; they can call on the executors to assent to the land vesting in them during the minority: *ib.*, s. 26, they then become "statutory owners." In a case of this description it is generally better to postpone the assent till the beneficiary attains full age; in the meantime the executors have all the statutory powers of a tenant for life and of the S. L. Act trustees, but, if after clearing the death duties, the executors are different persons from the S. L. Act trustees they will give effect to the directions of the latter: *ib.*, s. 26 (2).

Accumulations.

Whether the son is given a vested life interest or a fee simple or an entailed interest the surplus accumulations made during the minority will vest in him if he attains twenty-one or marries. In other cases they will go with the capital of the property: T. Act, 1925, s. 31 (2); unless a contrary direction is given: *ib.*, s. 69 (2).

This Form is strictly a realty form, but is for use in a Will dealing with the residue as personal estate.

(*c*) See Ad. of E. Act, 1925, s. 35, replacing the Real Estate Charges Acts, and extending the principle to property generally.

at my death which shall be discharged out of my residuary personal estate in exoneration thereof:

(2) MY Trustees shall out of my residuary personal estate discharge all the duties which on my death shall become payable in respect of the said property in exoneration thereof.

No. 15B.

Devise of enfranchised land.

(1) I DEVISE my enfranchised property (formerly copyhold of the manor of ——, in the county of ——, to which I was admitted on the —— day of ——) to my son ——, in fee simple free from any incumbrances affecting the same at my death which shall be discharged out of my residuary personal estate in exoneration thereof:

(2) I BEQUEATH (*continue as in* (5) *of Form No.* 15):

Direction to extinguish manorial incidents.

(3) I DIRECT my Trustees to arrange for the extinguishment of any manorial incidents affecting the said property at my death by the payment of a gross sum out of my residuary personal estate and I bequeath to them such a sum free of duty as may be sufficient to effectuate the said extinguishment and to discharge all costs in connexion therewith.(*d*)

No. 16.

Bequest of leasehold house and furniture to trustees for wife during widowhood, she paying rent, &c.

(1) I BEQUEATH [free of duty] my leasehold house and property known as No. ——, &c., held under a Lease dated, &c., and all my furniture and household effects (*e*) in or about or appropriated or belonging to the said dwelling-house at my death (*f*) (other than plate or plated articles, books, pictures or prints), unto my Trustees UPON TRUST for my wife during her widowhood, she paying the ground rent, and all rates, taxes and outgoings payable in respect of the said dwelling-house and observing and performing the covenants contained in the Lease under which the same is held at my death:(*g*) And after the death or second marriage of my wife (*h*) (whichever first happens) the

Afterwards to fall into residue.

Assent to be produced to steward.

(*d*) If the manorial incidents have not been extinguished, the assent to the devisee must be produced to the steward within six months and the fines, &c., paid.

Disclaimer.

(*e*) A legatee may disclaim an onerous lease and yet take chattels bequeathed with it: *Re Lysons* (1912), 56 Sol. J. 705.

Ademption.

(*f*) A permanent removal of chattels from a house under such a bequest effects ademption, but a temporary removal does not, see Theobald, 7th ed., 168, and cases there cited; and *Re Lea* (1911), 104 L. T. 253; see also note to Form No. 12, *supra*, as to insurance.

(*g*) The acceptance of the legacy imposes in equity an obligation to fulfil the conditions of the lease: *Re Loom* [1910], 2 Ch. 230; 79 L. J. Ch. 704.

Rights of tenant for life.

(*h*) If the additional condition of "or if she ceases to reside at the said dwelling-house," is added, the widow is nevertheless a person having the powers of a tenant for life: *Re Freme* (1912), 56 Sol. J. 362. As a tenant for life she has an inalienable right to require the executors to make a vesting assent in her favour: S. L. Act, 1925, s. 106; but as the trustees are to hold said dwelling-house, furniture and household effects shall fall into and form part of my residuary estate and be held on trust for sale:

Trustees to make an inventory.

(2) MY Trustees shall as soon as conveniently may be after my death cause an inventory to be made of the furniture and other household effects hereinbefore bequeathed for the benefit of my wife during her widowhood, and the provision as to inventories and chattels contained in the Statutory Will Forms, 1925, shall apply thereto:

Trustees not to be bound to see that wife pays rent, &c.

(3) MY Trustees shall not be bound to see that my wife duly pays the rent and observes and performs the covenants and conditions reserved by and contained in the said Lease, nor shall they be liable for or in respect of any forfeiture or loss which may arise by reason of the non-payment by my wife of the said rent or the breach by her of any of the said covenants and conditions:

Power for Trustees with consent of wife to sell furniture, &c.(*i*)

(4) MY Trustees may at any time or times during the widowhood of my wife, with her consent in writing, sell the said furniture and other household effects bequeathed therewith or any of them or any part thereof respectively, and in such case the money to arise from such sale shall sink into and form part of my residuary personal estate And my Trustees shall be the trustees hereof for the purposes of the Settled Land Act, 1925.

No. 16A.

Bequest of a lease formerly renewable.

(1) I BEQUEATH to my wife absolutely [free of duty] my house and land known as ——, held under a Lease dated, &c., formerly perpetually renewable but converted into a term of 2,000 years by the Law of Property Act, 1922:

(2) IF the additional rent in lieu of fines and other payments on renewal has not been fixed before my death I direct my trustees at the cost of my residuary personal estate to do all things necessary for ascertaining the amount of the additional rent and for obtaining proper endorsements on the lease of the

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the house on trust for sale on her death or re-marriage she would generally be well advised to allow the executors to postpone any assent till an assent could be made to the trustees for sale. The trustees holding on a future trust for sale would be S. L. Act trustees: *ib.*, s. 30 (1) (iv). Pending an assent the executors have all the powers of a tenant for life and of S. L. Act trustees, and can let the widow into possession: Ad. of E. Act, 1925, s. 43, and give effect to her wishes.

Future trust for sale.

(*i*) The widow has the powers of a tenant for life as regards the house under S. L. Act, 1925, s. 20 (1) (vi); *Re Pollock* [1906], 1 Ch. 146; 75 L. J. Ch. 120. As to the application of the proceeds of a sale of the lease when sold by the widow: S. L. Act, 1925, s. 79; *Re Simpson* [1913], 1 Ch. 277; 82 L. J. Ch. 169.

amount thereof, the times at which it is to be payable and at which any lessee shall have power to determine the lease.

SECTION V.

PECUNIARY LEGACIES.

No. 17.

Bequest of immediate legacies by reference to schedule.

I BEQUEATH [free of duty] to the persons whose names and addresses are mentioned in the first and second columns of the —— Schedule to my Will the respective sums set opposite to their names in the third column of the same Schedule.

Form of Schedule.

THE —— SCHEDULE.

Particulars of pecuniary legacies.

Name of Legatee.	Address and Description.	Amount of Legacy.

No. 18.

Legacies to servants.

I BEQUEATH [free of duty] to each of my indoor and outdoor servants not in receipt of daily, weekly or monthly (*j*) wages who shall be in my service at my death,(*k*) and shall have been in such service for at least twelve months immediately preceding, and who shall not be under notice to leave, given or received, one year's wages in addition to wages then due.

Legacies to servants. Effect may depend on manner of payment of wages.

(*j*) A bequest of a year's wages to servants does not include servants employed at wages calculated by the week or month: *Re Ravensworth* [1905], 2 Ch. 1; 74 L. J. Ch. 353; but where outdoor servants are referred to they will take though only in receipt of weekly wages: *Re E. of Sheffield* [1911], 2 Ch. 267; 80 L. J. Ch. 521; *Re Smith* (1915), W. N. 12. If such servants are to be included, say:—

I BEQUEATH to each of my indoor and outdoor servants, whether in receipt of daily, weekly, monthly or yearly wages who shall be, &c., . . . a sum equal to the amount of their respective wages for the period of one year in addition to wages then due or paid during the year immediately preceding my death.

" Service at my death."

(*k*) These words are necessary, as under a direction " to pay each man who shall have been in my employ over ten years " it was held that a man who had left the testator's service was within the scope of the legacy: *Re Sharland* [1896], 1 Ch. 517; 65 L. J. Ch. 280; *cf. Re Cole* [1919], 1 Ch. 218; 88 L. J. Ch. 82; *Re Drake* [1921], 2 Ch. 99; 90 L. J. Ch. 381. As to the meaning of " servant," see *Re Lawson* [1914], 1 Ch. 682; *Re Bell* (1914), W. N. 89; *Re King* [1917], 2 Ch. 420; 87 L. J. Ch. 3; *Re Drake, supra*; *Re Jackson* [1923], 2 Ch. 365; 92 L. J. Ch. 622.

No. 19.

Bequest of legacy on attaining twenty-one with interest.

I BEQUEATH [free of duty] the sum of £—— to A. B. if and when he attains the age of twenty-one years, with interest thereon from my death until payment or investment of the principal money at the rate of £5 per cent. per annum, and if he shall be under that age at my death, I authorise my Trustees to invest the said sum in any investments in which my residuary estate is authorised to be invested with power to vary investments: And I direct that such investments and the annual income thereof and all statutory accumulations of income,(*l*) shall be held IN TRUST for the said A. B. if and when he attains the age of twenty-one years, but if the said A. B. dies under the age of twenty-one years I direct that the said legacy, investments and accumulations shall sink into and form part of my residuary estate.(*m*)

No. 20.

Legacy with substitution of children if legatee dies before testator.

I BEQUEATH [free of duty] the sum of £—— to C. D., and if he dies in my lifetime, leaving issue living at my death, I bequeath the same legacy to my Trustees IN TRUST for all or any the children or child of the said C. D. who attain the age of twenty-one years or being daughters marry under that age, and if more than one in equal shares:(*n*) AND if no child of the said C. D.

Maintenance.

(*l*) The legacy carries interest, hence the statutory maintenance and accumulation clauses apply: *Re Thatcher* (1884), 26 Ch. D. 426; 53 L. J. Ch. 1050; *Re Cooper* [1913], 1 Ch. 350; 82 L. J. Ch. 222; T. Act, 1925, s. 31 (3); L. P. Act, 1925, s. 175; though the accumulations would under s. 31, *supra*, belong to the legatee on marriage, the gift over if he dies under age is valid: T. Act, 1925, s. 69 (2).

Intermediate income.

(*m*) As an intermediate gift of income in some cases has the effect of vesting a legacy before the legatee attains twenty-one (see Theobald, 7th ed., 586; *Re Gossling* [1903], 1 Ch. 448; 72 L. J. Ch. 433; *Re Williams* [1907], 1 Ch. 180; 76 L. J. Ch. 41; *Re Ussher* [1922], 2 Ch. 321; 91 L. J. Ch. 521; and *cf. Re Ricketts* (1910), 103 L. T. 278), it is necessary, as in the text, to provide expressly how the income is to go if the legatee dies under age; see also *Re Kirkley*, 87 L. J. Ch. 247; *cf. Re Woolf* [1920], 1 Ch. 184; 89 L. J. Ch. 11. A trusteeship should be constituted to avoid the cost of appointing trustees of the infant's legacy under Ad. of E. Act, 1925, s. 42.

Maintenance clause when applicable to contingent legacy.

(*n*) If a legacy was given to a person before 1925 contingently on his attaining twenty-one, the legatee on attaining that age was not entitled to the intermediate income, and the executors had no power under the Conv. Act, 1881, s. 43, to apply any part of that income for his maintenance: *Re George* (1877), 5 Ch. D. 837; 47 L. J. Ch. 118; *Re Judkin's Trusts* (1884), 25 Ch. D. 743; 53 L. J. Ch. 496; *Re Dickson* (1885), 29 Ch. D. 331; 54 L. J. Ch. 510. But if a legacy was given to trustees as an immediate gift in trust for a class of persons who attain twenty-one, the contingent legatees on attaining twenty-one were entitled to the intermediate income, and the statutory maintenance clause applied: *Re Medlock* (1886), 55 L. J. Ch. 738; *Long* v. *Ovenden* (1881). 16 Ch. D. 691; 50 L. J. Ch. 314; *Re Clements* [1894], 1 Ch. 665; 63 L. J. Ch. 326. Where a legacy was held in trust for an infant for life contingently on attaining twenty-one, the trustees might, under the Conv. Act, 1881, s. 43 (1), apply intermediate income for maintenance, attains a vested interest in the said legacy, the same shall fall into and form part of my residuary estate.

No. 21.

Several legacies with similar substitution in each case.(*o*)

I BEQUEATH [free of duty] to —— (*names, and see Form No.* 17, *supra*) the sum of £—— each free of duty [with interest thereon from my death at the rate of £— per cent. per annum until payment or appropriation]: AND if any of the said legatees die in my lifetime leaving issue living at my death, then and in every such case I BEQUEATH the legacy which the person so dying would have taken if he or she had survived me unto my Trustees IN TRUST for his or her children or child who attain, &c. (*as in last Form*): AND if no child of the legatee so dying as aforesaid attains a vested interest in the said legacy, the same shall fall into and form part of my residuary estate.

No. 22.

Legacy with direction that same shall not lapse if legatee leaves issue.(*p*)

I BEQUEATH [free of duty] the sum of £—— to C. D. [with interest, &c., *as above*]: And I declare that if the said C. D. dies in my lifetime, leaving issue living at my death, the said legacy shall not lapse, but shall go and devolve in the same manner as if he had survived me and died immediately after

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notwithstanding that, not so applied, it would never belong to an infant: *Re Boulter* [1918], 2 Ch. 40; 87 L. J. Ch. 385; see also *Re Mellor* [1922], 1 Ch. 312; 91 L. J. Ch. 393. Where a parent gives a future legacy to a child, then income can be applied for maintenance under the construction put upon such gifts by courts of equity: *Re Bowlby* [1904], 2 Ch., at pp. 698, 704; 73 L. J. Ch. 810.

Future legacy to child of testator.

New law.

T. Act, 1925, s. 31 (3), applies to legacies where the testator dies after 1925. That section applies to a contingent interest only if the limitation carries the intermediate income, but it applies to a future or contingent legacy by the parent of, or by a person standing *in loco parentis* to the legatee, if and for the period which under the general law the legacy carries interest for the maintenance of the legatee. If the income is sufficient, interest will be at the rate of £5 per cent., see 2 Wolst. & Cherry, 11th ed.

Specific gifts and contingent devises.

Under L. P. Act, 1925, s. 175, a contingent or future specific devise or bequest of property, real or personal, a contingent residuary devise of freeholds, and a specific or residuary devise of freeholds to trustees on trust for persons whose interests are contingent or executory, will (subject to s. 31, *supra*, as to accumulations) carry the intermediate income from the death of the testator, except so far as the income may be otherwise expressly disposed of.

(*o*) See note to last Form.

Lapse.

(*p*) Legacies to the testator's issue are saved from lapse by the Wills Act, 1837, s. 33, which does not, however, apply to a class gift, or where the testator by a subsequent Will or codicil shows an intention that the gift should lapse: *Re Meredith* [1924], 2 Ch. 552. The decision in *Re Gresley* [1911], 1 Ch. 358; 80 L. J. Ch. 255, that a testator cannot make a similar provision in his Will to that contained in the section in favour of collaterals or strangers unless the gift is expressly made in favour of the personal representatives of the legatee, is an unnecessary extension of the rule that a gift cannot be made to a deceased person (*Re Coleman* (1876), 4 Ch. D. 165, 168; 46 L. J. Ch. 33; *Toplis* v. *Baker* (1789), 2 Cox, 119), and must be taken to be overruled by *Re Clunies-Ross* (1912), 106 L. T. 96; *Re Greenwood* [1912], 1 Ch. 392; 81 L. J. Ch. 298.

my death, provided that this direction shall take effect by way of direct gift to the persons (if any) beneficially interested under the Will or on the intestacy of the said C. D. and shall not make the said legacy part of his personal estate so as to be liable for his debts or estate or other duty.(q)

No. 23.

Gifts of legacies with similar direction.

I BEQUEATH to (*names and amounts of legacies, see Form No.* 17, *supra*): AND if any of the said legatees die in my lifetime leaving issue living at my death,(r) then and in every such case the legacy given to the legatee so dying shall not lapse, but shall go and devolve in the same manner as if the legatee had survived me and died immediately after my death. (*Continue as in last Form, substituting* "the legatee" *for* "the said C. D.")

No. 24.

Bequest of legacies for daughters and settlement thereof by reference to the Statutory Will Forms.

(1) I BEQUEATH [free of duty] to my Trustees for each of my daughters and her issue a legacy of £—— with interest thereon at the rate of £4 per cent. per annum from my death until investment or appropriation:

(2) Form 7 of the Statutory Will Forms, 1925 (giving a life interest to each legatee, a power to appoint among issue, gift over to children and a power to appoint a life interest to a surviving spouse) is incorporated in my Will and shall apply to each of the legacies given by this clause, together with the statutory power of advancement, which shall apply for the benefit of each daughter to an amount not exceeding one half of her legacy as well as for the benefit of her children and issue, but with the following modification, namely, that each daughter's life interest shall be without power of anticipation during coverture.

No. 24A.

Bequest of legacies to daughters and settlement thereof (express trusts).

(1) I BEQUEATH [free of duty] to my Trustees for each of my daughters and her issue a legacy of £—— with interest thereon at the rate of £4 per cent. per annum from my death until investment or appropriation:

(2) MY Trustees shall stand possessed of the legacy so bequeathed for a daughter and her issue upon trust to invest

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It was overlooked in *Re Gresley* that the provision operated as a gift over and was not a mere declaration against lapse. There is no magic in the words "executors and administrators" if the testator's intention is otherwise clear. An Act of Parliament is not required to validate the gift over, nor is there any distinction for this purpose between children and strangers: *cf. Re Smith* [1916], 2 Ch. 368; 85 L. J. Ch. 657. A power of appointment cannot be given to a deceased person so as to become exercisable by his Will: *Re Young* [1920], 2 Ch. 427; 89 L. J. Ch. 614.

Double duty.

(q) These words will avoid the double duty: *Re Scott* [1901], 1 Q. B. 228; 70 L. J. K. B. 66.

(r) See *Re Coleman* (1876), 4 Ch. D. 165; 46 L. J. Ch. 33.

To invest.

the same in their names [or under their control](*s*) [with her consent if of age, and if under age and also after her death at the discretion of my Trustees] in any of the investments in which my residuary estate is authorized to be invested, with power [with the like consent or] at the like discretion to vary the investments thereof for others of a like nature:

Daughter for life with right to an advance.

(3) My Trustees shall stand possessed of the legacy of a daughter and the investments for the time being representing the same and all statutory accumulations (if any) of income thereof hereinafter included in the description of such daughter's legacy (subject to any advancement which my Trustees shall think proper to make and which I hereby authorise to be made for her benefit to any amount not exceeding one-half of each daughter's legacy) Upon trust to pay the income thereof to such daughter for her life without power of anticipation during any coverture:

Trusts for issue.

(4) And after her death the capital and income of her legacy or so much thereof respectively as shall not have been paid or applied under any trust or power affecting the same shall be held (*Trust for her issue as she appoints, and in default for her children. Adapt Form No.* 55, *sub-clause* (1), *p.* 713, *saying* " her issue " *for* " my issue," " as such daughter " *instead of* " as my wife," *and* " the children or child of such daughter " *instead of* " my children or child "):

Hotchpot.

(5) *Hotchpot clause. Adapt Form No.* 56, *p.* 714, *saying* " such daughter's legacy " *for* " the Trust Fund " *and* " by such daughter " *instead of* " by my wife ":

Advancement.

(6) The statutory power of advancement shall apply for the benefit of the children and issue of each daughter:(*t*)

In default of children, each daughter's legacy to fall into residue.

(7) If a daughter shall not have any child who, under the trust in default of appointment hereinbefore contained, attains a vested interest in her legacy, then, subject to the trusts and powers hereinbefore declared in favour of such daughter and her issue, her legacy and the income thereof and all statutory accumulations (if any) of income, or so much thereof respectively

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Bearer securities.

(*s*) These words are not essential, though desirable; a direction that investments are to be made in the names of trustees will not (without an express prohibition) prevent an investment in bearer securities: T. Act, 1925, ss. 7, 68 (13).

Power of advancement.

Receipts.

(*t*) For the statutory power of advancement, see T. Act, 1925, s. 32. If a daughter marries while an infant, she will be able to give a receipt for the income of her legacy: L. P. Act, 1925, s. 21. As she takes a vested life interest she can, on her marriage, give a receipt for accumulations made of her income: T. Act, 1925, s. 31 (2).

as shall not have become vested or been paid or applied under any trust or power affecting the same, shall fall into and form part of my residuary estate:

Power to appoint life interest in legacy to husband.

(8) *Power to appoint life interest to husband. Adapt sub-clause* (7) *of Form No.* 60, *p.* 719, *using parts in square brackets referring to legacy. Add further sub-clauses in that Form if required.*

No. 25.

Option by way of discretionary trust to pay legacy to married woman or to her trustees or retain on trust for her and her issue.

(1) If any woman to whom a legacy is hereinbefore bequeathed shall be under coverture at my death, my Trustees may at their absolute discretion either pay the whole or any part of her legacy to such persons and in such manner generally as she shall by any writing under her hand direct, or, if my Trustees shall think it more for her interest, may pay the whole or any part of such legacy to the trustees for the time being of any settlement made or to be made on or subsequently to her marriage, to be by them held upon the trusts (*u*) by that settlement declared concerning the wife's trust fund or any specified portion which my Trustees may select of the trust funds comprised therein, or my Trustees may retain all or any part of the legacy of such woman under coverture, and invest the same in any investments hereby authorised, and vary investments:

(2) My trustees shall stand possessed of such investments Upon trust to pay the annual income thereof to such woman during her life, without power of anticipation during any coverture, and after her death (as to the capital and income) In trust for all or any one or more exclusively of the others or other of the issue of the same woman (*continue usual trusts for issue as she shall appoint, and in default for children equally, with hotchpot and advancement clauses, adapting Forms Nos.* 55, 56 *and* 57, *pp.* 713–5, *et seq.*):

If no child of the married woman attains a vested interest, capital of legacy to go as she shall appoint, in default to her next-of-kin.

(3) If no child of the said woman attains a vested interest under the trust in default of appointment hereinbefore contained, then, subject to the trusts and powers hereinbefore contained, the capital and income of the investments representing her legacy shall be held In trust for such persons as she shall while not under coverture by deed, revocable or irrevocable, or as she shall, whether covert or sole, by Will or codicil appoint, and in default of and subject to any such appointment In trust for the persons who would, as her statutory next-of-kin, under the Administration of Estates Act, 1925, have become entitled thereto at her death if she had died possessed thereof intestate and with-

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(*u*) See *Re Currie* [1910], 1 Ch. 329; 79 L. J. Ch. 285; *Re Powell* [1918], 1 Ch. 407; 87 L. J. Ch. 237; *cf. Re Connell* [1915], 1 Ch. 867; 84 L. J. Ch. 601.

out ever having been married, such persons, if more than one, to take as tenants in common (*v*) in the same shares in which they would have taken under that Act:

(*Add power to appoint life interest to husband surviving, see Form No.* 60, *sub-clause* (7), *p.* 719:)

Power to appoint separate trustees for any legacy.

(3) MY Trustees may appoint a separate set of trustees for the legacy of any woman under the bequests aforesaid and pay or transfer her legacy or the investments representing the same to the separate set of trustees so appointed to be held upon the trusts affecting the same, and thenceforth she shall during her life have power to appoint new trustees thereof.(*w*)

No. 26.

Bequest for benefit of a man or woman for life with remainder to his or her issue *per stirpes*.

(1) I BEQUEATH [free of duty] to my Trustees the sum of £——, UPON TRUST, with the consent of A., of, &c., during his [her] life and after his [her] death at the discretion of my Trustees, to invest the same in the names or under the control of my Trustees in any of the investments in which my residuary estate is authorised to be invested with power to vary investments: And until investment the said sum shall carry interest at the rate of £4 per cent. per annum from my death, payable out of my residuary estate: And I direct my Trustees to stand possessed of the said sum or investments and the annual income thereof:

(2) UPON TRUST to pay the same income to the said A. during his life [her life without power of anticipation during any coverture] and after his [her] death (as to capital and income):

(3) IN TRUST in equal shares for all or any the children or child of the said A. living at the death of the survivor of myself and him [her] who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at that time who attain the age of twenty-one years, or marry under that age, of any child of the said A. who dies in his [her] or my lifetime leaving issue living at the time of the death of the survivor of us, such issue to take through all degrees according to their stocks and in equal shares the share or shares which their parent would have taken if living at the time aforesaid, and having then attained a vested interest, and so that no issue shall take whose parent is living at the time aforesaid and and so capable of taking:(*x*)

(*v*) These words avoid any question of joint tenancy: *Re Nightingale* [1909], 1 Ch. 385; 78 L. J. Ch. 196.

Separate trustees.

(*w*) Separate trustees could be appointed independently of this express power: T. Act, 1925, s. 37 (1) (b), but the tenant for life would not have had power to appoint new trustees.

(*x*) See *Re Alexander* [1919], 1 Ch. 371; 88 L. J. Ch. 242.

(4) The statutory power of advancement shall apply :

In default of issue, fund to fall into residue.

(5) If no child or other issue of the said A. attains a vested interest under the trusts hereinbefore contained, then, subject to the trusts aforesaid, the said sum of £—— or the investments representing the same and the income thereof and all statutory accumulations, if any, of income, or so much thereof respectively as shall not have been applied under any statutory or other power, shall fall into and form part of my residuary estate.

No. 27.

Legacy for benefit of a man and his wife and their issue.

(1) *As in sub-clause* (1) *of last Form, but saying :* "with the consent of A., of, &c., and B., his wife, during their joint lives, and of the survivor of them during his or her life, and after the death of both at the discretion, &c." :

(2) Upon trust to pay the said income to the said A. during his life,(*y*) and after his death to the said B. during her life without power of anticipation during any coverture, and after the death of both :

(3) In trust (as to capital and income) for all or any one or more exclusively of the other or others of the children or more remote issue of the said A. and B. in such shares and manner as the said A. and B. shall from time to time or at any time, by any deed, revocable or irrevocable, jointly appoint and in default of and subject to such appointment as the survivor of them shall by any such deed or by Will or codicil appoint, and in default of and until and subject to any such appointment :

Hotchpot clause.

(4) In trust (as to capital and income) for all or any the children or child of the said A. by the said B. living at the death of the survivor of myself and the said A. and B. (*continue as in sub-clause* (3) *of last Form, saying :* "any child of the said A. and B. who dies in their or my lifetime," and *adding* : "But so that no child who or whose issue shall take any part of the trust legacy under any such appointment as aforesaid shall take any further part thereof without bringing the share appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly ") :

(5) The statutory power of advancement shall apply :(*z*)

Refusal to accept income.

(*y*) If the husband is to be given a protected life interest, see T. Act, 1925, s. 33. If he refuses to accept the income his wife's interest will be accelerated, but after her death he may retract his refusal and receive the income during the residue of his life : *Re Young* [1913], 1 Ch. 272 ; 82 L. J. Ch. 171.

References to statutory power of advancement.

(*z*) References are made in these Forms to the statutory power of advancement (T. Act, 1925, s. 32) not because it would not apply if no reference thereto were made, but either to extend it or to call the attention of the testator thereto in case he desires to negative the power.

(6) If no child or other issue of the said A. by the said B. attains, &c. (*as in sub-clause* (5) *of last Form*).

No. 27A.

Legacy to Trustees of a settlement in satisfaction of a covenant by the testator for payment of a principal sum.

For the purpose of satisfying my covenant contained in the Settlement dated the —— day of ——, 19—, made on the marriage of my son ——, for the payment of the sum of £—— I bequeath that sum, or so much thereof as may remain owing at my death, free of duty to the persons who at my death shall be the trustees of that Settlement to be held by such trustees Upon the trusts and subject to the powers and provisions thereby declared concerning the said sum, and the receipt of such trustees shall be a sufficient discharge.

No. 27B.

Legacy settled to devolve with a peerage or other dignity.

(1) I bequeath to my Trustees the sum of £—— [free of duty] with interest thereon from my death at the rate of £— per cent. per annum till invested or appropriated Upon trust to invest the same in any of the investments in which my residuary estate is authorised to be invested with power to vary investments and with power also to purchase land in England to be settled (by a trust deed and vesting deed) so as to devolve with this legacy and to nominate themselves or any other persons to be trustees for the purposes of the Settled Land Act, 1925 :

(2) My Trustees shall stand possessed of the said legacy and the investments for the time being representing the same Upon trust that the several persons who are or shall be in the line of the heirs male of the body of —— (the first Earl of X.) may take successively the following interests and in the following order and manner namely :—

(i) That each of the said several persons born before my death shall take an interest for his life (and in the case of land without impeachment of waste) with remainder immediately after his death :

(ii) Upon trust for his first and other sons (not being persons who would also take life interests) successively according to seniority in tail male and so that each of the said several persons shall take their interests successively in the order in which as heirs of the body of the first Earl of X. they would succeed to the Earldom of X. with remainder :

(iii) Upon trust for my Trustees absolutely or in fee simple on the trusts declared concerning my residuary estate :

(3) Upon the acquisition of any freehold or leasehold property my Trustees may at their discretion, without being liable to account for the exercise of such discretion in the settlement thereof, give such powers in addition to the powers conferred by

the Settled Land Act, 1925, and generally provide for such matters as they shall think fit, and any settlement so made shall be deemed to be valid [and shall not be effected by means of a trust for sale].(a)

No. 28.

Reversionary legacies payable after death of a person given a life interest in residuary estate.

I BEQUEATH [free of duty] to such of the persons whose names and addresses are mentioned in the first and second columns of the —— Schedule hereto as shall be living at the death of the survivor of myself and my wife the respective sums set opposite to their names in the third column of the same Schedule, to be paid with the duty thereon after the death of the survivor of my wife and myself, and to carry interest at the rate of £4 per cent. per annum from her death if she survives me until discharge: And if my wife dies in my lifetime the last-mentioned legacies and the duty thereon shall be paid as soon as practicable after my death out of my residuary personal estate. (*For Form of Schedule, see Form No.* 17, *supra.*)

SECTION VI.

CHARITABLE LEGACIES.(*b*)

No. 29.

Bequest of charitable legacies by reference to a schedule.

I BEQUEATH [free of duty] to the institutions whose names and addresses are mentioned in the first and second columns of the —— Schedule hereto the respective sums set opposite their names in the third column of the same Schedule: [And I declare that the receipts of the treasurers of the respective institutions shall be sufficient discharges to my Trustees, who shall not be concerned to see to the application of such legacies.]

Form of Schedule.

THE —— SCHEDULE.

Particulars of charitable legacies.

Name of Institution.	Address.	Amount of Legacy.

No trust to purchase land.

(*a*) It is no longer necessary to impose a primary trust to purchase land in order that personalty should devolve with a dignity, for entailed interests can be created in personalty: L. P. Act, 1925, s. 130.

Gifts for charitable purposes.

(*b*) The old distinctions between pure and impure personalty are now abolished: Mortmain and Charitable Uses Act, 1891, s. 3. Land may be devised to charitable uses, but must be sold within a year: *ib.*, s. 5, unless

No. 30.

Bequest of charitable legacies.

I BEQUEATH [free of duty] the following charitable legacies [for which the receipts of the treasurers of the respective societies hereinafter named are to be sufficient discharges] (that is to say) To the —— Society £—; To, &c.

No. 31.

Gift of legacy for building and endowing an almshouse.

I BEQUEATH [free of duty] the sum of £—— unto —— (*Trustees*), UPON TRUST that the said Trustees shall therewith establish an almshouse for —— poor persons, being residents in the Parish of ——, in manner following (that is to say):

(1) The said Trustees (*c*) shall, with the leave of the Court or a Judge thereof, or of the Charity Commissioners under section eight of the Mortmain and Charitable Uses Act, 1891, apply a sufficient part of the said legacy in purchasing a piece of land (with or without buildings) in the said Parish as a site for the almshouse, and shall expend a further part of the said legacy in erecting a suitable building or in converting existing buildings on the said piece of land, and shall invest the remainder of the said sum of £— in any investments authorised by law for the investment of trust money, with power from time to time to vary the investments thereof:

(2) The said Trustees shall, out of the income arising from such investments, keep the said almshouse in proper repair and insured against fire, and shall apply the surplus of the said income in making a weekly allowance to each of the inmates of the said almshouse:

(3) (*Insert directions as to the qualifications of inmates, and any rules and regulations which the testator may wish to impose*:)

(4) The statutory power of appointing new trustees shall apply to the foregoing trust.

No. 32.

Gift of a piece of land and a legacy to establish an alms-house.

I GIVE the piece of land (*describing it*) and the sum of £—— [free of duty] unto —— (*Trustees*), UPON TRUST that the said

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the Charity Commissioners or the court extend the period; and personalty directed to be invested in land for benefit of a charity is to be held as though there had been no such direction: *ib.*, s. 7; unless in either case the court or the Charity Commissioners are satisfied that the land is required for actual occupation: *ib.*, s. 8. If not sold, the land vests in the Official Trustee of Charity Lands: s. 6. As to the importance of showing a general charitable intention where trustees are given a direction to select charities: *Re Willis* [1921], 1 Ch. 44; 90 L. J. Ch. 94. The words in square brackets in Forms 29 and 30 are not required if Pt. I of the Statutory Will Forms, 1925, is made applicable.

Majority of charity trustees.

(*c*) In the administration of a charity of a public nature the decision of the majority of trustees binds the minority: *Re Whiteley* [1910], 1 Ch. 600; 79 L. J. Ch. 405; *cf. Re Roth* (1896), 74 L. T. 50. If no trustees of a charitable trust are appointed, the legacy should be paid under the directions of the Charity Commissioners to the Official Trustees of Charitable Funds.

Trustees shall establish an almshouse, &c. (*as in last Form*), in manner following (that is to say):—

(1) In the first place, the said Trustees shall, with the leave of the High Court or of a Judge thereof or of the Charity Commissioners under section eight of the Mortmain and Charitable Uses Act, 1891, retain the said piece of land or so much thereof as shall be required as a suitable site for the said almshouse, including a convenient garden and appurtenances thereto:

(2) If the whole of the said piece of land shall not be required for the purpose aforesaid, the said Trustees shall sell the remainder thereof and add the proceeds thereof to the said sum of £——:

(3) The Trustees shall out of the said sum of £—— and such sum (if any) as shall be added thereto as aforesaid erect a suitable building for the said almshouse, and shall invest the residue of the said money, &c. (*as in last Form to end*).

No. 33.

Gift of legacy as a fund for providing pensions for poor old persons.(*d*)

Conditions.

I BEQUEATH the sum of £—— to A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c., as a fund for providing pensions for poor old persons residing in the Parish of ——, in accordance with and subject to the conditions next hereinafter contained (that is to say):—

(1) The fund shall be administered by five Trustees, of whom the rector for the time being of the Parish of ——, if willing to act, shall be one. The four last-mentioned persons shall with the said rector be the first Trustees of the charity. Every future trustee shall be appointed by a resolution of the Trustees to be passed at a special meeting:

(2) Any trustee who refuses or is incapacitated or unfit to act, or who communicates in writing to the Trustees his wish to resign, or who is absent from every meeting of the Trustees for two years consecutively, shall thereupon cease to be a Trustee:

(3) Upon the occurrence of a vacancy the Trustees shall as soon as conveniently may be after the expiration of one month from its occurrence hold a special meeting to fill up the vacancy:

(4) The Trustees for the time being of the charity shall invest the legacy in any investments authorised for the investment of trust money and apply the income thereof, first, in paying the expenses attending the administration of the trust, and, secondly, in providing pensions for such poor persons qualified as

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Old age pensions.

(*d*) This Form, which has appeared in former editions, is retained, but it is probable that it will not often be required, having regard to the provisions now made by the Old Age Pensions Act, 1908, and the Widows', Orphans' and Old Age Contributory Pensions Act, 1925; but it can be adapted for other purposes.

hereinafter is mentioned as they shall from time to time appoint to be pensioners :

(5) Every pensioner must be a poor person of good character, must be at least sixty years old, must have lived in the Parish of —— for not less than five years before his or her appointment [without having received poor law relief during those five years] :

(6) No pension shall be less than five shillings nor more than seven shillings and sixpence a week (*or whatever other sum may be fixed*), and a pension shall not in any event exceed such a weekly sum as shall with any pension for the time being payable to a pensioner under the Old Age Pensions Act, 1908, the Widows',&c.,Pensions Act,1925,or any other statutory provisions make up the aggregate weekly sum of one pound a week (*or the sum fixed*) ; and every pension shall be paid either weekly or monthly, as the Trustees shall think fit, and the Trustees may, instead of paying a pension direct to the pensioner, apply the same in any manner which they may think fit for the benefit of the pensioner :

(7) Every pension shall be granted for a term not exceeding one year in the first instance, but the same may be prolonged by the Trustees, if they think fit, from year to year :

(8) The Trustees may at any time during the current year discontinue a pension if in their opinion the pensioner shall have become unfit to receive the same by reason of bad conduct or of improved circumstances (whether by reason of any statutory provision or otherwise) or for any other reason, and in particular the Trustees may discontinue any pension or any part thereof the withdrawal whereof would entitle the pensioner to receive a Statutory or other pension :

(9) All appointments of pensioners and all other business in connexion with the administration of the charity shall be made and conducted at meetings of the Trustees called for the purpose :

(10) Every meeting shall be convened by the rector of the parish or by any two other trustees. Notice in writing of every meeting shall be delivered or sent by the post to each trustee four days at least before the date of the meeting, and every notice of meetings shall state the place, day and hour of the meeting and the nature of the business to be transacted thereat :

(11) At every meeting three trustees shall be a quorum, and the rector of the parish (if present) shall be the chairman. If he is absent, the trustees present shall elect one of their number to be chairman for that meeting. Every matter shall be determined

by the majority of the Trustees present and voting on the question. In case of an equality of votes on any question the chairman shall have a second or casting vote.

No. 34.

Bequest of a legacy for the purpose of the upkeep of a particular grave, by means of a gift to a charity so long as it maintains the grave, with a gift over if default is made.(e)

(1) I BEQUEATH [free of duty] to the Trustees of the —— Hospital at —— the sum of £—— UPON TRUST to invest the same in any investments for the time being authorised as investments for trust money with power to vary investments and to stand possessed of such legacy and the investments for the time being representing the same UPON TRUST to apply the annual income thereof for the general purposes of the said Hospital so long as the said Hospital shall provide for the putting and keeping in due order and proper repair of the graves and monuments with their inclosures of my late father and mother, ——, in the Churchyard at ——, in the County of —— :

(2) PROVIDED that if the said Hospital shall for twelve months fail to effect or carry out the requisite repairs or works or shall otherwise fail to comply with the foregoing conditions, then and in such case the said legacy and the investments for the time being representing the same shall be paid or transferred to —— (*another charitable institution*) absolutely.

[(3) THE receipt of the Treasurer of the said Hospital shall be a sufficient discharge to my Trustees.]

No. 35.

Devise confirming the gift of land to a charity

(1) BY a Conveyance dated, &c., and made, &c. (duly sent to the Charity Commissioners to be recorded as provided by section twenty-nine of the Settled Land Act, 1925), I have conveyed by way of gift a piece of land at, &c. To —— (*Trustees*),

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Validity of gifts for the upkeep of tombs.

(e) The validity of a gift for the upkeep of tombs depends on whether or not the general public will derive a benefit under it. Hence, a gift for the upkeep of a particular tomb outside a church is bad: *Re Vaughan* (1886), 33 Ch. D. 187; *Re Rogerson* [1901], 1 Ch. 715; 70 L. J. Ch. 444; but a gift for the general upkeep of a churchyard or a class of tombs in a churchyard is good: *Re Manser* [1905], 1 Ch. 68; 74 L. J. Ch. 95 (a gift for the upkeep of a churchyard restricted to a particular sect); *Re Pardoe* [1906], 2 Ch. 184; 75 L. J. Ch. 455 (a gift for the upkeep of the graves of pensioners in a certain almshouse, who should be buried in a particular churchyard). On the other hand, a gift for the upkeep of a particular tomb actually within a church is good on the ground that it is for the benefit of the inhabitants at large that not only the fabric, but also the ornaments of a church, should not be allowed to fall into decay: *Hoare* v. *Osborne* (1866), L. R. 1 Eq. 585; 35 L. J. Ch. 345; *Re Barker* (1909), 25 T. L. R. 753; so is a bequest for the erection of a stained glass window in a church: *Re King* [1923], 1 Ch. 243; 92 L. J. Ch. 292. The above Form is based on the decision in *Re Tyler* [1891], 3 Ch. 252; 60 L. J. Ch. 686. That case decided that the perpetuity rule does not apply to a gift over in a certain event from one charity to another. It is essential that the legatees of both the immediate gift and the gift over should be charities, see *Worthing Corporation* v. *Heather* [1906], 2 Ch. 532; 75 L. J. Ch. 761.

Tomb within church.

Perpetuities.

in fee simple, upon certain trusts therein declared, for the erection thereon, of, &c. (*state charitable uses shortly*): AND I am advised that the said Conveyance will be void if I die within twelve months (*f*) after the date thereof: Now, for the purpose of confirming the aforesaid gift, I devise the said piece of land in the event of my death within twelve months from the date of the said Conveyance to the said —— (*Trustees of the charity*), in fee simple Upon the trusts declared concerning the same by the said Conveyance (*g*) and I direct my personal representatives to assent to the said devise at the cost of my residuary personal estate:

to cover the case of the donor's death within a year after the gift.

(2) I BEQUEATH to the said Trustees free of duty such a sum (if any) as may be required to discharge all death duties which may become payable on my death in respect of the said land and the costs incidental thereto and I direct them to apply the said legacy in exonerating the said land from all claims in respect of the said death duties if any.

SECTION VII.

ANNUITIES. (*h*)

No. 36.

Bequest of annuity.

(1) I BEQUEATH [free of duty (*hh*)] to —— an annuity of £—— for his life [her life without power of anticipation during any coverture], to commence from my death (*i*) and to be considered as accruing from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six months after my death.

(*f*) Being a gift for charitable purposes, this period is not affected by the Fin. (1909-10) Act, 1910, see s. 59 (1), as regards duties.

(*g*) Under the Mortmain, &c., Act, 1891, this devise is valid, but the land must be sold, unless the court or the Charity Commissioners are satisfied that it is required for actual occupation for the purpose of the charity, in which case its retention may be sanctioned; see also note to Form No. 29, *supra*.

Rentcharge.

(*h*) For a limitation of an annuity charged on land (*i.e.*, a rentcharge), see Forms in Wills (Real), *infra*. The words in square brackets in these forms relating to setting aside a fund, &c., for annuities will not be required if Pt. I of the Statutory Will Forms, 1925, is made applicable.

(*hh*) It is not expedient to give an annuity free of duty.

Arrears of annuity.

(*i*) As regards interest on arrears of the annuity the annuitant is in the same position as other creditors: *Re Salvin* [1912], 1 Ch. 332; 81 L. J. Ch. 248. An annuitant is not necessarily precluded from recovering arrears of an annuity because she has not actively enforced the duty of trustees to pay it: *Re Rix* (1912), 56 Sol. J. 573.

[(2) I DIRECT my Trustees to set apart (*j*) as soon as conveniently may be and invest in their names in any of the investments in which my residuary estate is authorised to be invested, with power to vary investments, a sum the income whereof when invested shall be sufficient at the time of investment to pay the said annuity, and to pay the same accordingly, with power to resort to the capital of the appropriated fund whenever the income shall be insufficient: And until such sum shall be so appropriated I charge my residuary personal estate with the said annuity, but after appropriation my residuary estate shall thereby be discharged from the said annuity:

(3) SUBJECT to the payment of the said annuity, the appropriated fund, or so much thereof as shall not be resorted to to make up deficiency of income, shall fall into and form part of my residuary estate, and any surplus income of the appropriated fund shall be applied in the same manner as income of my residuary personal estate.]

No. 37.

Bequest of annuities by reference to a Schedule.

(1) I BEQUEATH [free of duty] to the persons whose names and addresses are mentioned in the first and second columns of the —— Schedule hereto the respective annuities mentioned in the fourth column thereof for the periods (*k*) and subject to the provisions mentioned in the third column of the same Schedule, the said annuities to commence [unless otherwise stated in that Schedule] from my death and to be considered as accruing from day to day, but to be paid [unless otherwise stated in that Schedule] by equal half-yearly payments, the first payments to be made at the end of six months after my death:

[Direction to appropriate fund to answer all annuities.]

[(2) MY Trustees shall set apart and invest in any investments in which my residuary estate is authorised to be invested, with power to vary investments, such a sum of money as will

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Statutory power to appropriate.

(*j*) An express direction for appropriation clears the residuary estate. Under Ad. of E. Act, 1925, s. 41, the personal representatives have power to appropriate a fund to answer annuities, thus meeting the decisions in *Re Owthwaite* [1891], 3 Ch. 494; 60 L. J. Ch. 854; *Re Street* (1922), W. N. 291. A direction for payment of the annuity out of income followed by a gift over of corpus, "subject thereto," charges the annuity on the corpus: *Re Watkins* [1911], 1 Ch. 1; 80 L. J. Ch. 102; *Re Young* [1912], 2 Ch. 479, and *cf. Re Boulcott* (1911), 55 Sol. J. 313. As to the abatement of annuities, see *Re Metcalf* [1903], 2 Ch. 424; 72 L. J. Ch. 786. As to the position where the estate is not sufficient for setting apart the whole capital sum, see *Re Cottrell* [1910], 1 Ch. 402; 79 L. J. Ch. 189; *Re McMahon* (1911), 55 Sol. J. 552; see also *Re Croxon* [1915], 2 Ch. 290; 84 L. J. Ch. 845.

Abatement.

Annuity *pur autre vie.*

(*k*) An annuity given to A. during the life of B. gives A. and her personal representatives the annuity during B.'s life: *Re Drayton* (1911), 56 Sol. J. 253.

when invested produce by the income thereof an annual sum equal to the amount of the annuities for the time being payable under my Will, and apply the income or (if necessary) the capital of the fund so appropriated in payment of the said annuities, which fund or such parts thereof as may not be required to answer any subsisting annuity shall, on the dropping of the respective annuities, fall into and form part of my residuary estate : And until such sum shall be so appropriated I charge my residuary personal estate with the said annuities, but after appropriation my residuary estate shall be thereby discharged from the said annuities :

(3) As each annuity ceases I authorise my Trustees to treat as part of my residuary estate a corresponding part of the appropriated fund, retaining only such part thereof as may from time to time, in their opinion, be sufficient to produce by the income thereof an annual sum equal to the then subsisting annuity or annuities.(*l*)]

Form of Schedule.

THE —— SCHEDULE.

Particulars of annuities.

Name of annuitant.	Address.	Duration of annuity and provisions (if any).	Amount of annuity.
Jane A.	——	For life without power of anticipation during any coverture.	£100.
Mary B.	——	During widowhood.	£50.

No. 37A.

Bequest of remuneration annuities to trustees.

(1) I BEQUEATH [free of duty (*m*)] to each person hereinbefore named as a general executor and trustee of my Will who accepts the office of executor and trustee an annuity of £—— for so much of his life as he shall continue to act as a trustee of my Will:

(2) UPON the appointment of any new trustee hereof I authorise my Trustees to appoint to any new trustee an annuity not exceeding £—— for so much of his life as he shall continue to act

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(*l*) This is what the court would do in an administration action : *Harbin* v. *Masterman* [1896], 1 Ch. 351 ; 65 L. J. Ch. 195 ; and see *Re Evans and Bettell* [1910], 2 Ch. 438 ; 79 L. J. Ch. 669 ; *cf. Re Richardson* [1915], 1 Ch. 353 ; 84 L. J. Ch. 438 ; *Re Dempster* [1915], 1 Ch. 795 ; 84 L. J. Ch. 597. See also Statutory Will Forms, 1925, Form 5, also Ad. of E. Act, 1925, s. 41 (9).

Duties.

(*m*) On the appointment of a new trustee, who becomes entitled to an annuity, neither succession nor estate duty is payable : *A.-G.* v. *Eyres* [1909], 1 K. B. 723 ; 78 L. J. K. B. 384.

as a trustee of my Will, but so that not more than the sum of £—— shall be payable in any year in respect of remuneration annuities :

(3) EVERY remuneration annuity shall commence either from my death or from the date of the appointment of the trustee to whom an annuity is appointed and shall be considered as accruing from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six months from the date of the commencement of the annuity :

(4) and (5) *As in sub-clauses* (2) *and* (3) *of the last Form, unless the Statutory Will Forms*, 1925, *Pt.* I, *are made applicable.*

No. 38.

Bequest of reversionary annuity payable after death of person having a life interest in residue.

(1) I BEQUEATH [free of duty] to —— an annuity of £—— for his life [her life without power of anticipation during any coverture], to commence from the death of the survivor of myself and my wife and to be considered as accruing from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six months after the death of such survivor.

[(2) I DIRECT my Trustees after the death of the survivor of myself and my wife to set apart and invest, &c. (*continue as in Form No.* 36, *supra, to the end, unless the Statutory Will Forms are made applicable*).]

No. 39.

Bequest of annuity to a person during a spinsterhood.(*n*)

I BEQUEATH to —— an annuity of £—— [free from duty] if she shall be a spinster at my death, to commence from my death, and to be paid to her until her death or marriage (whichever first happens), and to be considered, &c. (*continue as in Form No.* 36, *supra*).

No. 40.

Bequest of annuity on protective trusts.

(1) I BEQUEATH to my Trustees [free of duty] an annuity of £—— during the lifetime of C. D., of, &c., the said annuity to commence from my death (if the said C. D. be then living) and to accrue from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six months from my death if the said C. D. be then living :

(2) THE said annuity shall be held on protective trusts for the benefit of the said C. D. during the residue of his life in accordance with section thirty-three of the Trustee Act, 1925 :

Conditions in restraint of marriage.

(*n*) This limitation is not a "restraint against marriage," see Theobald, 7th ed., 625. Also, a gift to a married woman so long as she lives apart from her husband is not against public policy, if she was living apart at the date of the gift : *Re Charleton* (1911), 55 Sol. J. 330 ; *Re Lovell* [1920], 1 Ch. 122 ; 88 L. J. Ch. 540. A condition subsequent in restraint of marriage is only *primâ facie*, not *per se*, void : *Re Hewitt* [1918], 1 Ch. 458 ; 87 L. J. Ch. 209.

[(3) and (4) *As in* (3) *and* (4) *of next Form unless the Statutory Will Forms are made applicable.*]

No. 40A.

Bequest of annuity determinable on bankruptcy, &c.(*o*)

(1) I BEQUEATH to —— an annuity of £—— [free from duty] during his life or until he shall become bankrupt or shall assign or charge the said annuity or any part thereof, or do or suffer any act or thing whereby the said annuity or some part thereof, if belonging absolutely to him, would become vested in or payable to some other person, in any of which events, as well as on the death of the said —— (whichever first happens), the said annuity shall cease to be payable to him [and shall, during the residue of his life, be payable to my Trustees for the purposes of the discretionary trust hereinafter declared] the said annuity to commence, &c. (*continue as in Form No.* 36 *to end*), *or if a discretionary trust is to be added, omit sub-clauses* (2) *and* (3) *of that Form, and add the following :—*

Discretionary power to apply annuity for benefit of bankrupt or his family.

(2) IF the said annuity shall cease in the lifetime of the said —— by reason of any such event as aforesaid, my Trustees may at their discretion, in every or any year during the rest of the life of the said ——, apply any sum or sums of money (not exceeding the sum of £—— in any one year) in or towards the maintenance, support or otherwise for the benefit of the said —— or his wife, children or more remote issue (if any), or any one or more of them, exclusively of the others or other, in such manner as my Trustees shall without being liable to account think fit.

[(3) MY Trustees shall set apart and invest in any investments in which my residuary estate is authorised to be invested, with power to vary investments, such a sum as will when invested produce by the income thereof the annual sum of £—— and apply the income, or if necessary the capital of the fund so set apart, in payment of the said annuity of £—— while payable and in performing the aforesaid discretionary trust if the same shall arise : And until such sum shall be so appropriated I charge

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Restraint on anticipation.

(*o*) A married woman restrained from anticipation cannot create a valid charge on an annuity bequeathed to her in this form, hence a purported charge would not cause a forfeiture : *Re Adamson* (1913), 109 L. T. 25 ; see also *Re Smith* [1916], 1 Ch. 369 ; 85 L. J. Ch. 473 ; *Re Marshall* [1920], 1 Ch. 284 ; 89 L. J. Ch. 204.

Annuity determinable on bankruptcy.

Where a life interest is to determine upon any event whereby the income or any part of it would, if belonging absolutely to the tenant for life, be payable to any other person, such determination occurs whenever a receiving order is made and income comes into the hands of the trustees before it is discharged : *Re Laye* [1913], 1 Ch. 298 ; 82 L. J. Ch. 218.

my residuary personal estate with the said annuity, but after appropriation my residuary estate shall be thereby discharged from the said annuity :

(4) AFTER the determination of the said annuity and discretionary trust, and in the meantime subject thereto, the fund so set apart and the income thereof not required for the purpose aforesaid shall sink into and form part of my residuary estate or the income thereof.]

No. 41.

Gift of several annuities on protective trusts.

(1) I BEQUEATH (*as in sub-clause* (1) *of Form No.* 37, *supra*) :

(2) MY Trustees shall stand possessed of the annuity bequeathed to each of the foregoing annuitants on protective trusts for the benefit of each annuitant during his or her life in accordance with section thirty-three of the Trustee Act, 1925 :

[(3) and (4) *As in* (3) *and* (4) *of the next Form, unless the Statutory Will Forms*, 1925, *are made applicable.*]

No. 41A.

Gift of several annuities determinable on bankruptcy, &c.

(1) I BEQUEATH, &c. (*as in sub-clause* (1) *of Form No.* 37, *supra*) :

Discretionary trust for bankrupt or his family.

(2) PROVIDED that if any person to whom an annuity is hereinbefore given shall become bankrupt, or assign or charge his or her annuity or any part thereof, or do or suffer anything whereby the said annuity or any part thereof would become vested in or payable to any other person, then and in any such case the annuity given to such person shall cease : And after the cesser of any such annuity in the lifetime of the annuitant my Trustees may, at their absolute discretion, without being liable to account for the exercise of such discretion, in every or any year during the rest of the life of the annuitant, apply any sums not exceeding in any one year the amount of the annuity hereinbefore given to him or her, for the maintenance, support or otherwise for the benefit of the annuitant and his or her wife or husband and issue (if any) or any one or more of them, exclusively of the other or others, in such manner as my Trustees shall, without being liable to account, think fit.

[(3) I DIRECT my Trustees to set apart and invest in any of the investments in which my residuary estate is authorised to be invested, with power to vary investments, such sum as will when invested produce by the income thereof the amount of the several annuities hereinbefore given, and to apply the income or (if necessary) the capital of the fund so set apart in payment of the said annuities while payable and in the performance of the discretionary trusts hereinbefore declared if the same shall arise, and to the intent that, subject to the said annuities and discretionary trusts, the said fund and the income thereof or so much thereof as may not be required to answer any subsisting annuity shall fall into and form part of my residuary estate or the income thereof: And until such sum shall be so appropriated I charge my residuary personal estate with the said annuities, but after appropriation my residuary estate shall be thereby discharged from the said annuities:

(4) My Trustees may, as each annuity and discretionary trust ceases, treat as part of my residuary estate a corresponding part of the appropriated fund, retaining only such part thereof as may from time to time, in the opinion of my Trustees, be sufficient to meet the annuities and discretionary trusts then subsisting.]

No. 42.

Legacy to Trustees for the income to be applied for the benefit of a lunatic brother, and subject thereto to fall into residue.

I bequeath [free of duty] the sum of £—— to my Trustees, Upon trust that my Trustees shall invest the same in any of the investments in which my residuary estate is authorised to be invested, with power to vary investments And shall, during the life of my brother O. P., now residing at —— House under the care of Dr. ——, apply at the absolute discretion of my Trustees the income of the said investments or a sufficient part thereof for the maintenance, support, or otherwise for the benefit of the said O. P., with power to continue him in the institution where he shall be at my death or to remove him from thence and place him under the care of some other persons, and generally to arrange and provide for the support and comfort of the said O. P. in such manner as they shall in their uncontrolled discretion think fit, And, subject to the foregoing trust, the said sum of £——, and the investments representing the same, and so much of the income thereof as in the opinion of my Trustees shall not be required for the purposes aforesaid, shall sink into and form part of my residuary estate or the income thereof.

No. 43.

Authority for Trustees to make an allowance not exceeding a certain annual amount to an improvident brother.

(1) My Trustees may, during the life of my brother R. S., if they shall in their absolute discretion think proper, make an allowance to the said R. S., or for the benefit of him and his wife and issue (if any) of such an amount, and either by quarterly, monthly, or other payments, and generally in such manner as my Trustees shall think fit, provided that the amount of such allowance in any one year shall not exceed £——, and my Trustees may either pay the said allowance to the said R. S. or to his wife or issue, or may apply the same for his, her, or their benefit, or of any one or more of them, exclusively of the other or others, in such manner as my Trustees shall in their absolute

Discretionary powers to discontinue or suspend.

discretion think fit: And my Trustees may in their absolute discretion decide whether or not they will make any such allowance, and may at any time discontinue or suspend the same either wholly or partially without assigning any reason for so doing:

(2) MY Trustees may set apart and appropriate and invest in any investments in which my residuary estate is authorised to be invested, with power to vary investments, a sufficient part of my residuary personal estate to provide such allowance as aforesaid, out of the income of the said investments and after appropriation my residuary estate shall be thereby discharged from the said allowance, and may be distributed accordingly:

(3) SUBJECT to the said allowance, the fund so set apart shall sink into and form part of my residuary estate, and so much of the income of the said fund as shall not be applied in any year for the purpose aforesaid shall be paid to the persons for the time being entitled to the income of my residuary estate.

No. 44.

Annuities to servants, with power for Trustees to purchase government or other annuities.

(1) I BEQUEATH [free of duty] the several annuities following (that is to say) :—

(i) To my housekeeper, A. B., whether in my service or not at my death, an annuity of £—— during her life;

(ii) To my butler, C. D., if he shall be in my service at my death, an annuity of £—— during his life;

(iii) To ——, &c.

(2) I DIRECT that females shall take without power of anticipation, and that each annuity shall commence from my death and shall accrue due from day to day, but shall be paid by equal quarterly payments, the first payment to be made at the end of three months from my death.

Power to purchase annuity.

(3) MY Trustees may provide for payment of any annuity hereby bequeathed, either by purchasing a Government annuity or an annuity from an insurance office,(p) or by setting apart as an annuity fund investments the income whereof shall in the

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(p) See *Re Brunning* [1909], 1 Ch. 276; 78 L. J. Ch. 75; when the nature of the annuity is not stated, only a government annuity can be purchased: *Re Castle* (1916), W. N. 195. The Statutory Will Forms, 1925, Form 5, does not give power to purchase an annuity.

Where an annual or periodical sum affects land, the Minister of Agriculture may give power to purchase a government annuity for redeeming it: L. P. Act, 1925, s. 191. If an annuity is discharged (on a sale or exchange) by the court under *ib.*, s. 50, government securities have to be provided: An annuitant is entitled only to the annuity and not to the fund that ought to have been laid out in the purchase of the annuity: *Re Strange* (1916), 60 Sol. J. 640.

opinion of my Trustees be sufficient at the time of setting apart to pay such annuity, and any annuity so provided for shall cease to be a charge upon the residue of my estate and become charged solely on the annuity purchased or on the income and capital of the investments so purchased or set apart, and my residuary estate or the proceeds thereof may be distributed accordingly discharged from the said annuities :

(4) Upon the cesser of any annuity the annuity fund (if formed) or so much (if any) thereof as my Trustees do not think necessary to retain to answer any remaining annuity shall fall into and form part of my residuary estate, and any surplus income of the annuity fund after payment of annuities shall be applied in the same manner as income of my residuary estate.

No. 45.

General directions as to legacies and annuities.(r)

I give the following directions with regard to the legacies and the annuity [annuities] hereby [*or* by any codicil hereto (*q*)] bequeathed but the directions shall not extend to any interest given in my residuary estate :—

Legacies and annuity to be free of duty.

(1) All legacies and the annuity [annuities] shall be paid [and enjoyed(*s*)] free of duties payable on my death :(*t*)

Power to deliver chattels to an infant.

(2) Any chattel bequeathed to an infant may be delivered to him or her, and the receipt of the infant shall be a sufficient discharge to my Trustees :(*u*)

[Receipts of treasurers of charities.]

[(3) The receipt of the treasurer of any institution shall be a sufficient discharge to my Trustees in respect of any money or property bequeathed to such institution :]

(4) Any pecuniary legacy bequeathed to an infant may be

(*q*) See *Re Trinder* (1911), 56 Sol. J. 74.

(*r*) These general directions are for use where several legacies are given to which similar provisions are to apply.

Legacies free of duty.

(*s*) The words in brackets are to be used where any specific legacies are intended to be free of legacy duty : *Douglas* v. *Congreve* (1836), 1 Keen, 410 ; 6 L. J. Ch. 51 ; *Re Johnston* (1884), 26 Ch. D. 538 ; 53 L. J. Ch. 645 ; *Re Townend* (1914), W. N. 145.

(*t*) The direction for payment of legacies free of duties constitutes a gift of the legacy and a sufficient amount of money to pay the duties : *Re Turnbull* [1905], 1 Ch. 726 ; 74 L. J. Ch. 438. As to the effect of duties imposed after the testator's death, see *Re Snape* [1915], 2 Ch. 179 ; 84 L. J. Ch. 803. As to the effect of a bequest "subject to death duties," see *Re Morrison* (1910), 102 L. T. 530 ; *Re Brown* (1916), 60 Sol. J. 353. A life interest in residue given by a will is a "bequest" within the meaning of a clause in that will giving legacies free of death duties : *Re Kennedy* [1917], 1 Ch. 9 ; 86 L. J. Ch. 40. A direction to pay legacy duty does not apply to foreign duties of the same nature : *Re Scott* [1915], 1 Ch. 592 ; 84 L. J. Ch. 366.

(*u*) The receipt of an infant given under this direction is valid : *Re Deneker* (1895), 72 L. T. 220. For the power for married infants to give receipts : L. P. Act, 1925, s. 21.

Legacies to infants.

paid to his or her parent or guardians, whose receipt shall be a sufficient discharge to my Trustees [*or*, No pecuniary legacy bequeathed to an infant shall vest in the legatee unless he or she attains the age of twenty-one years or being female marries under that age, but the same shall be retained by my Trustees, UPON TRUST to invest such legacy in any investments in which my residuary estate is authorised to be invested with power to vary investments And I direct that such investments and the annual income thereof and all statutory accumulations of income shall be held IN TRUST for the legatee if and when he or she attains the age of twenty-one years, or being female marries, but if the legatee dies under that age, or being female under that age and unmarried, I direct that the legacy, investments and accumulations shall sink into and form part of my residuary estate]:(*v*)

Abatement of annuities. (*vv*)

(5) Where by reason of a deficiency of assets any annuity becomes liable to abatement, either temporarily or permanently, provision shall be made by my Trustees at their absolute discretion for the payment of a rateably reduced annuity in lieu of the original annuity either by the purchase of an annuity from the Government or from an insurance office or by means of an appropriated fund, as my Trustees, according to the circumstances of each case, may consider expedient, to the intent that no annuitant shall be entitled to call for the payment of a capital sum in lieu of his annuity.

No. 45A.

Legacies and annuities to be free of duty.

ALL legacies and annuities hereby [*or* by any codicil hereto] bequeathed shall be paid [and enjoyed] free of death duties.

SECTION VIII.

DEVISE AND BEQUEST OF RESIDUARY REAL AND PERSONAL ESTATE UPON TRUST FOR SALE; TRUSTS FOR PAYMENT OF DEBTS, &c., AND DEFINITION OF TRUST FUND, &c.

No. 46.

General devise and bequest on administration trusts by reference to Statutory Will Forms.

I DEVISE AND BEQUEATH all the real and personal estate not hereby or by any codicil hereto otherwise specifically disposed of and which I can dispose of by Will in any manner I think proper either as beneficially entitled thereto or under any general power [including the statutory power to dispose of entailed

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(*v*) For the power to appoint trustees for an infant: Ad. of E. Act, 1925, s. 42.

(*vv*) See *Re Metcalf* [1903], 2 Ch. 424.

property] unto my Trustees upon the administration trusts expressed in Form 8 of the Statutory Will Forms, 1925, and that form shall be incorporated in my Will and shall apply without any variation.(w)

No. 47.

General devise and bequest on trust for sale (express trust).

(1) I DEVISE AND BEQUEATH all the real and personal estate not hereby or by any codicil hereto otherwise specifically disposed of,(x) and which I can dispose of by Will in any manner I think proper (y) either as beneficially entitled thereto or under any general power [including the statutory power to dispose of entailed property],(z) unto my Trustees UPON TRUST that my

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(w) See the notes to the next form, which in effect explain the "Administration Trusts" so incorporated.

(x) This includes property specifically devised if the gift fails, *e.g.*, where the specific legatee attests the Will: *Mason* v. *Ogden* [1903] A. C. 1; 72 L. J. Ch. 152.

(y) See Wills Act, 1837, s. 25, and Theobald, 7th ed., 228, *et seq.*, as to the general effect of a residuary gift.

General and special powers.

Express reference.

(z) S. 27 of the Wills Acts, 1837, makes property subject to a general power of appointment pass by a residuary devise and bequest except where the instrument creating the power requires express reference to it, see *Re Davies* [1892], 3 Ch. 63; 61 L. J. Ch. 595; and *cf. Re Lane* [1908], 2 Ch. 581; 77 L. J. Ch. 774; and generally, Theobald, 7th ed., 239, *et seq.*, and *Wrigley* v. *Lowndes* [1908], P. 348; 77 L. J. P. 148. This rule does not apply where the power has not become exercisable at the testator's death: *Re Young* [1920], 2 Ch. 427; 89 L. J. Ch. 614; see *Re Jarrett* [1919], 1 Ch. 366; 88 L. J. Ch. 150; also, *Re Barker* [1920], 1 Ch. 527; 89 L. J. Ch. 209. The word "general" excludes any question as to whether a special power is exercised: Farwell, 3rd ed., 214. Romer, J., in Chambers, followed *Ames* v. *Cadogan* (1879), 12 Ch. D. 868; 48 L. J. Ch. 762, in preference to *Von Brockdorff* v. *Malcolm* (1885), 30 Ch. D. 172; 55 L. J. Ch. 121. A special power is not within the section nor within ss. 24 and 25: Theobald, 7th ed., 247, *et seq.* Special powers must be expressly exercised in favour of their objects, see Forms 6, 7 and 8, *supra: Re Sanderson* (1912), 56 Sol. J. 291; but a special power to appoint income to a husband for life has been held to have been duly exercised by a general appointment to him of all property which the testatrix had power to dispose of by Will: *Re Ackerley* [1913], 1 Ch. 510; 82 L. J. Ch. 260; see also *Re Slack* [1923], 2 Ch. 359.

Special powers.

Re Powell's Trusts (1870), 39 L. J. Ch. 188, deciding that a general power to appoint by Will only, following a life interest to the appointor, must, as regards the rule against perpetuities, be construed as if inserted in the instrument creating the power, is not correct: Theobald, 7th ed., 610, and has not been followed: *Rous* v. *Jackson* (1885), 29 Ch. D. 521; 54 L. J. Ch. 732; *Re Flower* (1885), 34 W. R. 149; 55 L. J. Ch. 200.

Perpetuities.

In order to exercise the power conferred by L. P. Act, 1925, s. 176, specific reference must be made either to the property or the instrument under which it was acquired or to entailed property generally.

Entailed interests.

In the case of a married woman (as well as of a man) such property becomes liable for her debts, except debts contracted during coverture, but before the commencement of M. W. P. Act, 1882: *Re Roper* (1888), 39 Ch. D. 482; 58 L. J. Ch. 215; see M. W. P. Act, 1882, s. 4; and M. W. P. Act, 1893, s. 1: *Re Fieldwick* [1909], 1 Ch. 1; 78 L. J. Ch. 153, as to contracts entered into

Liability for debts.

Trustees shall sell (*a*) the said real estate (including chattels real) and call in, (*b*) sell and convert into money such part of my personal estate as does not consist of money, with power to postpone such sale and conversion for such a period as my Trustees without being liable to account may think proper, (*c*)

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after the Act of 1893. Ad. of E. Act, 1925, s. 32, sets out the classes of property which become assets for payment of debts, &c., this includes property appointed under a general power and entailed property when the statutory power is exercised. The section only applies where the death occurs after 1925: *ib.*, s. 54.

Management of land.

(*a*) Before 1926 the existence of the trust for payment of debts and legacies was a reason for refusing to make an order under S. L. Act, 1884, s. 7, giving the tenant for life of the proceeds of sale leave to exercise the S. L. Act powers: *Re Harding's Estate* [1891], 1 Ch. 60; 60 L. J. Ch. 277.

Delegation of powers.

On the same principle, the personal representatives (holding on trust for sale) might, it is conceived, object to delegating the powers to lease and accept surrenders under L. P. Act, 1925, s. 29, until they were satisfied that the debts, &c., could be discharged without the aid of the property to which the delegated powers would apply.

Composition of debts, &c.

(*b*) The T. Act, 1925, s. 15 (d), does not enable trustees to take up a mere passive attitude as regards debts owing to the testator: *Re Greenwood* (1911), 105 L. T. 509.

Power to postpone.

Wasting property.

Business.

Howe v. *E. of Dartmouth.*

(*c*) This power to postpone conversion enables (1) hazardous and wasting property to be retained *in specie*: *Gray* v. *Siggers* (1880), 15 Ch. D. 74: 49 L. J. Ch. 819; *Re Bates* [1907], 1 Ch. 22; 76 L. J. Ch. 29; *Re Wilson* [1907], 1 Ch. 394; 76 L. J. Ch. 210; *Re Nicholson* [1909], 2 Ch. 111; 78 L. J. Ch. 516; (2) testator's business to be carried on: *Re Chancellor* (1884), 26 Ch. D. 42; 53 L. J. Ch. 443; *Re Crowther* [1895], 2 Ch. 56; 64 L. J. Ch. 537; *Re Smith* [1896], 1 Ch. 171; 65 L. J. Ch. 269; and (3) (coupled with the direction as to income) excludes the rule in *Howe* v. *E. of Dartmouth* (1802), 7 Ves. 137; see *Re Chancellor, supra*; *Re Rowlls* [1900], 2 Ch. 107; 69 L. J. Ch. 562; *cf. Re Aste*, 87 L. J. Ch. 660; and see 22 L. Q. R. 285. The rule does not apply to real estate and leaseholds devised or bequeathed upon trust for sale: *Re Searle* [1900] 2 Ch. 829; 69 L. J. Ch. 712: *Re E. of Darnley* [1907], 1 Ch. 159; 76 L. J. Ch. 58; *Re Oliver* [1908], 2 Ch. 74; 77 L. J. Ch. 547; *Re Brooker* (1926), W. N. 93. For the statutory power to postpone: L. P. Act, 1925, s. 25.

Vesting of share in real estate held on trust for sale.

Where real estate is devised on trust for sale with a discretionary power of postponement the vesting in possession of a share in the proceeds of sale never did entitle the beneficiary to call for an immediate sale of the entirety or for a conveyance of his share in the land: *Re Horsnaill* [1909], 1 Ch. 631; 78 L. J. Ch. 331; *Re Kipping* [1914], 1 Ch. 62; 83 L. J. Ch. 218. As to the rights of persons who become absolutely entitled to all the shares: L. P. Act, 1925, ss. 3 (1) (ii), 34–38, conveyances of land in undivided shares are prohibited: *ib.*, s. 34. Where trustees of a fund, of which a settled legacy forms part, have power to postpone conversion, they may postpone conversion for more than a year if it is in the interest of the whole fund that they should do so: *Re Charteris* [1917], 2 Ch. 379; 86 L. J. Ch. 658; see also *Re Marshall* [1914], 1 Ch. 192; 83 L. J. Ch. 307.

Duration of trust for sale.

In favour of a purchaser the trust for sale continues till the land is conveyed to or by the direction of the beneficiaries: L. P. Act, 1925, s. 23.

Evidence of discretion.

Trustees are not bound to show by evidence that they have exercised their discretion: *Re Oddy* (1911), 104 L. T. 128.

and so that any reversionary interest be not sold until it falls into possession, unless my Trustees see special reason for sale :(*d*)

Application of income.

(2) THE income of my personal estate, however invested,(*e*) shall from my death be treated and applied as income, and no part thereof shall be added to capital [except accumulations of surplus income (if any) during a minority or pending a contingency (*f*)] :

Sinking fund policies.

(3) PROVIDED that income may be applied in effecting and maintaining a leasehold sinking fund policy or may be set aside and invested for providing a fund to answer any liabilities which in the opinion of my Trustees ought to be borne by income :

Adjustments between capital and income.

(4) MY Trustees may in their discretion adjust, in such manner as they think fit, having regard to the circumstances of the case, the incidence, as between capital and income, of the payments made in due course of administration.(*g*)

No. 48.

Trusts of proceeds of sale (express trusts).

(1) MY Trustees shall out of the money to arise from the sale and conversion of my said real and personal estate and out of my ready money, pay my funeral and testamentary expenses,(*h*) death duties payable out of capital on my death

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Reversions.

(*d*) The clause as to the sale of reversionary interests prevents the tenant for life claiming income on the value of a reversion not converted, as in *Re Earl of Chesterfield's Trusts* (1883), 24 Ch. D. 643; 52 L. J. Ch. 958; *Re Rowlls, supra.*

Application of income.

(*e*) See *Re Chaytor* [1905], 1 Ch. 233; 74 L. J. Ch. 106; Theobald, 7th ed., 553, *et seq.*; *Re Inman* [1915], 1 Ch. 187; 84 L. J. Ch. 309.

(*f*) Omit the words in brackets where there is no trust of the residue for infants, see T. Act, 1925, s. 31. The provisions of the Apportionment Act, 1870, are not excluded by this direction: *Re Edwards* [1918], 1 Ch. 142; 87 L. J. Ch. 248.

Adjustments.

(*g*) This sub-clause leaves it open for the trustees, in a proper case, to apply the principles in *Allhusen* v. *Whittell*, L. R. 4 Eq. 295; 36 L. J. Ch. 929; but that case must not be treated as of universal application.

Testamentary expenses.

(*h*) This form is not required if Form No. 46 (incorporating the Administration Trusts) is employed. As to what are testamentary expenses, see *Re Prince* [1898], 2 Ch. 225; 67 L. J. Ch. 531; *Re Clemow* [1900], 2 Ch. 182; 69 L. J. Ch. 522; *Re Baumgarten* (1900), 82 L. T. 711; *Re Pullen* [1910], 1 Ch. 564; 79 L. J. Ch. 303; *Re Briscoe* (1910), W. N. 251; Theobald, 7th ed., 801. Estate duty on personalty appointed by Will under a general power is not a testamentary expense: *O'Grady* v. *Wilmot* [1916], 2 A. C. 231; 85 L. J. Ch. 386; nor is that in respect of property subject to a general power of appointment which is not exercised: *Porte* v. *Williams* [1911], 1 Ch. 188; 80 L. J. Ch. 127; nor is estate duty in respect of real estate: *Re Sharman* [1901], 2 Ch. 280; 70 L. J. Ch. 671; and see *Re Trenchard* [1905], 1 Ch. 82; 74 L. J. Ch. 135; *Re Spencer Cooper* [1908], 1 Ch. 130; 77 L. J. Ch. 64; nor in respect of the subject-matter of a *donatio mortis causa*: *Re Hudson* [1911], 1 Ch. 206; 80 L. J. Ch. 129.

and not charged on or primarily payable out of other property, and my debts (*i*) except mortgage debts (if any), on property specifically devised or bequeathed, which under the Administration of Estates Act, 1925, are to be paid primarily out of the property charged therewith (*j*) and shall also pay or provide for the legacies and annuities hereby or by any codicil hereto bequeathed, but so that all legacies and annuities and the duty on all legacies and annuities bequeathed free of duty shall be paid primarily out of my personal estate :(*k*)

Investment.

(2) MY Trustees shall (*l*) invest the residue of the said money in their names or under their control in or upon any of the investments hereby authorised, with power for my Trustees at their discretion (*m*) to change such investments for others of a like nature.

No. 49.

Definition of Trust Fund.

MY Trustees shall stand possessed of the investments hereinbefore directed to be made or authorised to be retained(*n*) (including any part of my residuary estate remaining unconverted) and the investments for the time being representing the same (hereinafter called the Trust Fund), and of the annual income thereof Upon the trusts following, that is to say :—(*see Forms Nos.* 51, 51A, 52 and 53, *also Statutory Will Forms,* 1925, *Forms* 9 *or* 10).

(*i*) This creates a charge of the whole of the debts, not merely of a rateable part, on the real estate, hence the debts are not barred till twelve years from testator's death: *Re Raggi* [1913], 2 Ch. 206; 82 L. J. Ch. 396.

(*j*) See s. 35; *Re Hawkes* [1912], 2 Ch. 251.

Liability to pay legacies.

(*k*) Without this direction the duty is payable rateably out of real and personal estate: *Re Spencer Cooper* [1908], 1 Ch. 130; 77 L. J. Ch. 64; and see *Re Palmer* (1912), 106 L. T. 319. The basis of this rule is that, notwithstanding the trust for conversion, the residue is looked upon as "a mixed fund," and legacies are payable rateably out of real and personal estate: *Allan* v. *Gott* (1872), L. R. 7 Ch. 439; 41 L. J. Ch. 571; *Re Smith* [1913], 2 Ch. 216; 83 L. J. Ch. 13; see also *Berry* v. *Gaukroger* [1903], 2 Ch. 116; 72 L. J. Ch. 435; *Re Charlesworth* [1912], 1 Ch. 319; 81 L. J. Ch. 267. This also avoids apportionment for succession duty and legacy duty under the Customs, &c., Act, 1888, s. 21 (2). The additional succession duties imposed by the section and legacy or succession duty at the rate of 1 per cent. are no longer covered by estate duty: Fin. (1909-10) Act, 1910, s. 58 (2).

Apportionment of succession and legacy duty.

Investment.

(*l*) See *Re Burke* [1908], 2 Ch. 248; 77 L. J. Ch. 597.

(*m*) Trustees need not preserve evidence that they have exercised such discretion: *Re Oddy* (1911), 104 L. T. 128.

Retainer of investments.

(*n*) See *Re Thomas* [1891], 3 Ch. 482; 60 L. J. Ch. 781; *Re Chapman* [1896], 2 Ch. 763; 65 L. J. Ch. 892; *Jackson* v. *Dickinson* [1903], 1 Ch. at p. 953; 72 L. J. Ch. 761; *Re Godfree* [1914], 2 Ch. 110; 83 L. J. Ch. 734; *cf. Re Inman* [1915], 1 Ch. 187; 84 L. J. Ch. 309; T. Act, 1925, s. 4.

No. 50.

Residuary devise and bequest to a beneficiary absolutely.

SUBJECT to the payment of my funeral and testamentary expenses, death duties [except estate duty charged on land specifically devised] debts, legacies and annuities (which I hereby charge primarily on my personal estate), I DEVISE AND BEQUEATH all the real and personal estate not hereby or by any codicil hereto otherwise specifically disposed of, and which I can dispose of by Will, in any manner I think proper, either as beneficially entitled thereto or under any general power [including the statutory power to dispose of entailed property] unto —— absolutely.

No. 50A.

As to non-exercise of a testamentary power.

NOTWITHSTANDING anything to the contrary contained in my Will I declare that I do not hereby intend to exercise [the statutory power to dispose of entailed property *or*] the general power given to me by the settlement dated, &c. [*or* Will of ——, dated, &c.] to appoint —— (*describe object of power*) and which power has to be expressly referred to.(*o*)

SECTION IX.

TRUSTS OF INCOME AND PROVISIONS RELATING THERETO.

No. 51.

Trust for spouse for life with power to appoint to issue and gift over to them.

Form 9 of the Statutory Will Forms, 1925, is incorporated in my Will and shall apply to the Trust Fund and the income thereof [with the variation that my wife [my husband] shall take a life interest determinable on re-marriage] and the statutory power of advancement shall apply for the benefit of my issue.

No. 51A.

Income to wife during

UPON TRUST (*p*) to pay the said income to my wife during her life without power of anticipation during any coverture [*or* (*q*) during her widowhood]. And after her death [or second marriage,(*r*)

Reference to powers.

(*o*) See the reference to general powers in Form No. 46 or 46A, which would appear to be a sufficient reference: *Re Waterhouse* (1908), 98 L. T. 30; *Re Lane* [1908], 2 Ch. 581: 77 L. J. Ch. 774.

"Separate use."

(*p*) This Form should follow Form No. 46 or 49; there is no need to declare a separate use: M. W. P. Act, 1907, s. 2.

Gift during widowhood where marriage void.

(*q*) Where between the date of a testator's Will and death his marriage was declared void *ab initio*, a gift to his supposed wife "during her widowhood" failed, though a legacy to her as the testator's "wife" was good, being a mere misdescription: *Re Boddington* (1884), 22 Ch. D. 597; 25 *ib.* 685; 52 L. J. Ch. 239; 53 *ib.* 475; see also *Lepine* v. *Bean* (1870), L. R. 10 Eq. 160; 39 L. J. Ch. 847; *Phillips* v. *Probyn* [1899], 1 Ch. 811; 68 L. J. Ch. 401; *Re Kettlewell* (1907), 98 L. T. 23; *Re Wagstaff* [1908], 1 Ch. 162; 77 L. J. Ch. 190; *Re Hammond* [1911], 2 Ch. 342; 80 L. J. Ch. 690; Theobald, 7th ed., pp. 271, *et seq.* See also *Re Whitfield* [1911], 1 Ch. 310; 80 L. J. Ch. 263; a case under the Deceased Wife's Sister Marriage Act, 1907.

(*r*) If the widow is given a life interest determinable on re-marriage and a power of appointment among the testator's issue during her life, Form life [or widowhood] (express trust).

which first happens], I direct that the capital and income of the Trust Fund shall [subject to discharging thereout the reversionary legacies hereinbefore bequeathed] be held :—(*see Forms Nos.* 55 *and* 59, *infra*).

No. 52.

One moiety of income to wife during widowhood, and an annuity to her on re-marriage. (*s*)

Subject thereto trust for issue equally.

(1) As to one moiety (hereinafter called the Widow's Moiety) of the Trust Fund Upon trust to pay the income thereof to my wife during her widowhood, and if she marries again, then after her second marriage Upon trust out of the same income to pay to my wife during the residue of her life an annuity of £—— by equal half-yearly payments, the first payment thereof to be made at the expiration of six months from the date of her re-marriage, And as to the Widow's Moiety after the death or second marriage of my wife (and in the event of such second marriage subject to appropriating a fund for satisfying the said annuity as hereinafter provided) And as to the other moiety of the Trust Fund after my death (as to both capital and income) :—

(2) (*Trusts for issue— Form No.* 59a, *infra*):

Power to appropriate annuity fund.

(3) After the second marriage of my wife my Trustees shall so soon as conveniently may be set apart, out of the investments for the time being representing the Widow's Moiety, investments the income whereof shall at the time of appropriation be sufficient to pay the said annuity, And my Trustees shall pay the same accordingly, with power to resort to the capital of the appropriated fund whenever the income shall be insufficient, and after such appropriation the residue of the Widow's Moiety and the income thereof shall be thereby discharged from the said annuity ; And subject to the payment of the said annuity the appropriated fund, or so much thereof as shall not be resorted to to make up deficiency of income and any surplus income, shall be held upon the trusts hereby declared of the other moiety of the Trust Fund or the income thereof :

(4) The statutory power of advancement applies for the benefit of my issue.

No. 53.

Protective trusts in the income of residue.

(1) If ——, of, &c., shall be living at my death, then I direct that the annual income of the Trust Fund shall be held on protective trusts for his benefit during the residue of his life :

No. 58, *infra*, must be used. The alternative is to give her a power of appointment during widowhood only.

(*s*) This Form follows Form No. 49, *supra*. Under this Form the capital of one moiety will be distributable among the testator's issue as soon as they attain vested interests, part of the other moiety on the re-marriage of the widow, and the residue of the same moiety on her death.

(2) Provided that if during my lifetime some act or thing shall have been done or suffered or some event shall have happened whereby the trust expressed in paragraph (i) of sub-section (1) of section thirty-three of the Trustee Act, 1925, if subsisting, would have been determined, then the trusts expressed in paragraph (ii) of the said sub-section shall take effect from my death.

No. 53A.

Protected life interest in income of residue (t) (express trusts).

(1) If ——, of, &c., shall be living at my death [and if no act or thing shall have been done or suffered, and if no event shall have happened, whereby the trust next hereinafter declared if subsisting would be determined], then Upon trust to pay the annual income of the Trust Fund to the said —— during the residue of his life or until he does or attempts to do or suffers

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Effect of gifts over on bankruptcy, &c.

Forfeiture before testator's death.

(t) Form 53 or 53A should follow Form No. 49, *supra*. It is frequently desired to make the gift fail if the legatee is bankrupt, &c., at the testator's death. But a clause forfeiting a life interest on bankruptcy, though referring in terms to a future bankruptcy, takes effect where the donee has become bankrupt before the testator's death or even before the date of the Will, if such bankruptcy remains in force up to the time when the income becomes payable: *Manning* v. *Chambers* (1847), 1 Dr. & Sm. 282; 16 L. J. Ch. 245; *Seymour* v. *Lucas* (1860), 1 Dr. & Sm. 177; 29 L. J. Ch. 841; *Trappes* v. *Meredith* (1871), L. R. 7 Ch. 248; 41 L. J. Ch. 237; *Metcalfe* v. *M.* [1891], 3 Ch. 1; 60 L. J. Ch. 647; Theobald, 7th ed., 637. Similarly a life interest limited to a woman until she should take the veil was forfeited though she did so in the testator's lifetime: *Re Hewitt* [1926], 1 Ch. 740.

Bankruptcy annulled.

If the bankruptcy is annulled, or, in the case of a charge, the charge is satisfied before the life interest falls into possession, or before any payment has become due in respect thereof, there is no forfeiture: *White* v. *Chitty* (1866), L. R. 1 Eq. 372; 35 L. J. Ch. 343; *Lloyd* v. *L.* (1866), L. R. 2 Eq. 722; *Re Parnham's Trust* (1872), L. R. 13 Eq. 413; 41 L. J. Ch. 292; *Samuel* v. *S.* (1878), 12 Ch. D. 152; 47 L. J. Ch. 716. But if income has accrued while the bankruptcy was in force or during the continuance of a receiving order, the fact that it is not actually paid to the trustee in bankruptcy, or claimed by him before the annulment, does not prevent a forfeiture: *Re Loftus Otway* [1895], 2 Ch. 235; 64 L. J. Ch. 529; *Re Baker* [1904], 1 Ch. 157; 73 L. J. Ch. 172; *Re Laye* [1913], 1 Ch. 299.

Date of forfeiture.

If a forfeiture takes place, it operates from the date of the act of bankruptcy, and not from the date of adjudication: *Montefiore* v. *Guedalla* [1901], 1 Ch. 435; 70 L. J. Ch. 180.

Construction.

A life interest subject to a gift over in case the donee shall assign, mortgage, or anticipate the income is not forfeited by an involuntary alienation, *e.g.*, bankruptcy: *Whitfield* v. *Prickett* (1838), 2 Keen, 608; 7 L. J. Ch. 187; *Graham* v. *Lee* (1857), 23 Beav. 388; 26 L. J. Ch. 395. It is otherwise if the gift over is in case the donee shall "do or suffer" or shall "do or permit" anything whereby the property shall be assigned or charged, or whereby the income shall "cease to be payable to A.": *Roffey* v. *Bent* (1867), L. R. 3 Eq. 759; *Ex p. Eyston* (1877), 7 Ch. D. 145; 47 L. J. Bk. 62; *Re Brewer's S.* [1896], 2 Ch. 503; 65 L. J. Ch. 821; see also generally on the subject Theobald, 7th ed., 633, *et seq.*; and *Re Beaumont* (1910), 103 L. T. 124; *Re Evans* [1920], 2 Ch. 304; 89 L. J. Ch. 525.

Gift over on alienation

A gift over on alienation cannot be annexed to a fee simple in land, or to any act or thing, or until any event happens [(other than an advance under any power of advancement (*u*))], whereby, if the same income were payable to him absolutely for his life, he would be deprived of the right to receive the same or any part thereof,(*v*) in any of which cases, as well as on the death of the said —— (whichever first happens), the trust hereinbefore declared for payment to him of the said income shall determine :

Discretionary trust after failure or determination of life interest.(*w*)

(2) If the trust aforesaid shall fail or determine in the lifetime of the said —— then Upon trust during the residue of his life to pay or apply (*x*) the annual income of the Trust Fund for the maintenance and support or otherwise for the benefit of all or any one or more exclusively of the other or others of him and his wife and issue (if any) as my Trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit, or if he shall be unmarried or a widower without issue, Then for the maintenance, support or otherwise for the benefit of all or any one or more exclusively of the other or others of him and the person or persons who would, if he were actually dead, be entitled to the Trust Fund or the income thereof as my Trustees in their absolute discretion, without being liable to account as aforesaid, think fit :(*y*)

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cannot be annexed to fee simple or absolute interest.

an absolute interest in personal estate : *Re Dugdale* (1888), 38 Ch. D. 176 ; 57 L. J. Ch. 634 ; *Corbett* v. *C.* (1889), 14 P. D. 7 ; 58 L. J. P. 17 ; and see Theobald, 7th ed., 630, *et seq.* But there is apparently no objection to a gift over in the case of an absolute gift in reversion in case the donee shall have become bankrupt or aliened before the reversion falls into possession : *Samuel* v. *S.*, *supra* ; subsequent interests will not usually be accelerated by providing that on bankruptcy the trusts for payment of income to the bankrupt shall cease as if he were actually dead : *Re Cooper*, 86 L. J. Ch. 507.

(*u*) The words in square brackets will be required if the trust fund goes ultimately to the issue of the person given a protected life interest and a power of advancement with his consent is inserted or the statutory power applies.

Garnishee order.

(*v*) A garnishee order does not so deprive him : *Re Greenwood* [1901], 1 Ch. 887 ; 70 L. J. Ch. 326 ; see also *Re Mair* [1909], 2 Ch. 280 ; 78 L. J. Ch. 711.

An order made in divorce proceedings temporarily extinguishing the life interest operates as a forfeiture : *Re Carew* (1910), 103 L. T. 658.

Remoteness.

(*w*) *Cf. Re De Sommery* [1912], 2 Ch. 622 ; 82 L. J. Ch. 17, where the power to apply the capital and income was capable of being exercised beyond the period allowed by law and was accordingly void.

Discretionary trusts under different instruments.

(*x*) Where there are separate discretionary trusts under two instruments there is no right of equitable contribution between them : *Smith* v. *Cock* [1911], A. C. 317 ; 80 L. J. P. C. 98.

(*y*) Where a son's share is settled and this Form is used, a particular class, *e.g.*, the testator's other children, can be taken for the purpose of the discretionary trust if the son is unmarried or a widower without issue.

(3) AFTER the death of the said —— the capital and income of the Trust Fund shall be held (*see Form No.* 55, *infra, to be adapted, or Form No.* 59A, *infra*).

No. 54.

Provision against assignment of life interest.(z)

IF any person (other than a woman under coverture) hereby made tenant for life of any legacy or of any share in the Trust Fund shall do or attempt to do or suffer any act or thing, or in case any event (other than an advance under any power of advancement) shall happen, either in my lifetime or after my death, whereby such person would, in the absence of this present provision, be prevented from receiving all or any part of the annual income payable to him or her under my Will, then the trust hereinbefore contained for payment to him or her of such annual income shall not take effect or shall cease, as the case may be, and such annual income shall from time to time during the residue of his or her life be paid or applied to the persons and in the manner to whom and in which such annual income would for the time being be payable or applicable if the person who, but for this present provision, would be entitled to receive the same were actually dead.

SECTION X.

TRUSTS OF CAPITAL OF TRUST FUND AND PROVISIONS RELATING THERETO.

No. 55.

Trusts for issue as wife shall appoint; in default for children.

(1) IN TRUST for all or any one or more, exclusively of the others or other, of my issue, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement and otherwise at the discretion of any persons, and with such gifts over and generally in such manner, for the benefit of such issue or some or one of them, as my wife shall [during her widowhood,(*a*)] by deed, revocable or irrevocable, or by Will or codicil, appoint, And in default of and until and subject to any such appointment, IN TRUST for all or any my children or child (*b*) who

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(*z*) See first note to last Form. This Form (No. 54) can be placed immediately after the trusts affecting the residuary estate.

Power to appoint after cesser.

(*a*) If the wife is given a life interest determinable on re-marriage and a power of appointment during her life, Form No. 58, *infra*, which disposes of the income between the dates of the second marriage and the death of the wife, should be used.

Statutory forms not applicable when a child's share is settled.

Form No. 55 will not be used if Statutory Will Forms, 1925, Forms 9 and 10, are incorporated; but these statutory forms are not applicable when a child's share is settled. They could be varied, but it will generally be safer in such cases to use the express trusts.

(*b*) Only children who survive the testator take under this trust.

attain the age of twenty-one years, or being female marry under that age, and if more than one in equal shares :

[Variation where daughters' [*or* children's] shares are settled.]

[(2) NOTWITHSTANDING the trusts aforesaid, I direct that each daughter's [child's] share shall be retained and held on such of the trusts hereinafter declared concerning the same as shall be subsisting or capable of taking effect at my death, and the gift thereof shall not fail by reason only of her death [the death of a child] in my lifetime.(*c*)]

Provision against failure by death of one of a class (applicable when a share is not settled).

(3) PROVIDED that if any child [son (*d*)] of mine dies in my lifetime leaving issue living at my death, the [original and accruing] share [or shares] to which such child [son] would have been entitled if living at my death and having then attained the age of twenty-one years shall nevertheless go and devolve in like manner and be held on the like trusts as if the child [son] so dying had attained the age of twenty-one years and survived me and died immediately after my death.(*e*) [But so, nevertheless, that this proviso shall operate by way of direct gift to the persons (if any) beneficially interested under the Will or on the intestacy of such child [son], and shall not make any such share part of the estate of such child [son] so as to be liable for debts or estate or other duty.(*f*)]

[Provision to avoid double duty.]

No. 56.

Hotchpot clause.

ANY child who or whose issue takes any part of the Trust Fund under any appointment by my wife shall not, in the absence of any direction by her to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or her or his or her issue into hotchpot and accounting for the same accordingly.(*g*)

Provisions against failure of trusts.

Hotchpot.

(*c*) This provision preserves the interests of the persons entitled in reversion to the settled shares in the event of daughters dying in the lifetime of the testator: *Re Roberts* (1885), 30 Ch. D. 234; *Re Pinhorne* [1894], 2 Ch. 276; 63 L. J. Ch. 607; *Re Powell* [1900], 2 Ch. 525; 69 L. J. Ch. 788; *Re Whitmore* [1902], 2 Ch. 66; 71 L. J. Ch. 673; and see *Re Walter* [1912], 56 Sol. J. 632; *Re Laing* [1912], 2 Ch. 386; 81 L. J. Ch. 686; Theobald, 7th ed., 783.

(*d*) Where daughters' shares are settled as above, this proviso must be confined to the case of sons. If sons' shares are also settled, the proviso should be omitted. The words "original and accruing" apply where there is a gift over, see sub-clause (6) of Form No. 60, *infra*.

(*e*) This Form without the words at the end makes the share part of the deceased child's personal estate. A gift to children is a gift to a class living at the testator's death, and a child dying in his lifetime does not come within the description, so that s. 33 of the Wills Act, 1837, does not apply; see Theobald, 7th ed., 785.

(*f*) See notes to Form No. 22, *supra*.

(*g*) See Theobald, 7th ed., 772–79. If the Statutory Will Form, No. 9, is applied no express hotchpot clause will be required. As to the date on which the value of stocks brought into hotchpot should be ascertained, see *Re Crocker* [1916], 1 Ch. 25; 85 L. J. Ch. 179; also article in 140 L. T. 388.

No. 57.

Statutory advancement clause.

THE statutory advancement clause shall [not] apply for the benefit of [my children and remoter issue].(*h*)

No. 57A.

Advancement clause (express).

MY Trustees may at any time and from time to time [but during the life [widowhood] of my wife only with her consent in writing,(*i*)] raise any part or parts, not exceeding together one half, of the presumptive or vested share of any child or other issue of mine under the trusts hereinbefore declared, and pay or apply the same for the advancement or benefit of such issue as my Trustees think proper.(*j*)

No. 58.

Trust of income after second marriage of wife who takes during widowhood and has a power of appointment.

AFTER the second marriage of my wife the annual income of the Trust Fund shall, during the residue of her life, be paid or applied in like manner as the same would for the time being be payable or applicable if my wife were dead, having regard to any appointments which for the time being have actually been made by her under the power aforesaid, but so that such payment or application shall not be suspended on account of the possibility that she may make any future appointment or revoke an appointment.

No. 59.

Trusts for spouse and issue without a power of appointment by reference to Statutory Will Forms.

FORM 10 of the Statutory Will Forms, 1925 is incorporated in my Will and applies to the Trust Fund, subject to the following modifications, namely—

(1) The life interest of my wife shall be without power of anticipation during coverture [*or* the life interest of my wife shall determine on her re-marriage and the gift over shall take effect as if she had died at the time of her re-marriage]:

(2) The statutory advancement clause shall apply for the benefit of my children and remoter issue.

No. 59A.

Trust for

(1) IN TRUST (*k*) in equal shares for all or any my children or

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Statutory power, when applicable.

(*h*) T. Act, 1925, s. 32 (giving the power of advancement), applies to trusts created after 1925, but only where the property consists of money or securities (*ib.*, s. 68 (13)) or of property held on trust for sale and the money securities or proceeds are not considered as land or applicable as capital money for the purposes of the S. L. Act, 1925. Thus the power will generally apply in the case of personalty settlements and wills, but to remove doubts and to call attention to the power it will generally be expedient to refer to it.

(*i*) These words are only required where the wife takes a prior interest.

Interest on advancements.

(*j*) See Theobald, 7th ed., 463. The rate of interest on advances which are brought into hotchpot is £4 per cent.: *Re Davy* [1908], 1 Ch. 61; 77 L. J. Ch. 67. An advancement clause may affect the construction of a gift to a class: *Re Dunn* [1916], 1 Ch. 97; 85 L. J. Ch. 168; *Re Ward* [1920], 1 Ch. 334; 89 L. J. Ch. 181.

(*k*) A gift to children living at the wife's death and to the issue of children who die in the wife's lifetime does not, where the wife predeceases the testator, confer any interest on the issue of a son of the testator who is living at the wife's death but not at the death of the testator: *Re Kinnear* (1904), 90 L. T. 537; but *cf. Re Taylor* (1911), 56 Sol. J. 175.

children and issue of deceased children living at testator's death (express).

Shares vesting at twenty-one or marriage.(*m*)

child living at my death (*l*) who attain the age of twenty-one years or marry under that age, And for all or any the issue living at my death (*l*) who attain the age of twenty-one years, or marry under that age, of any child of mine who dies in my lifetime (*l*) leaving issue living at my death,(*l*) such issue to take through all degrees according to their stocks in equal shares the share or shares which their parent would have taken if living at my death,(*l*) and having then attained a vested interest, and so that no issue shall take whose parent is living at my death,(*l*) and capable of taking:

(2) The statutory advancement clause shall apply for the benefit of my children and more remote issue.

No. 60.

Settlement of daughters' [*or* children's] shares.(*n*)

(1) I direct that [after the death [or second marriage, whichever first happens] of my wife, unless she shall in exercise of the power of appointment hereinbefore given to her expressly direct to the contrary], my Trustees shall retain in their names or under their control the share of a daughter [a child] of mine in the Trust Fund [whether under or in default of any appointment], with power [after such daughter [child] attains the age of twenty-one years, and after the death [or second marriage, whichever first happens] of my wife with the consent of such daughter [child] during the residue of [his or] her life, but during [his or] her minority and also after [his or] her death] at the discretion of my Trustees from time to time to vary the investments thereof for others hereby authorised:

(2) My Trustees shall stand possessed of the share of such daughter [child] or the investments representing the same, and the accumulations (if any) of income made during [his or] her minority and while unmarried, which investments and accumula-

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Variation where vesting postponed till death of survivor of the testator and his wife.

(*l*) If the vesting is to be postponed, then in place of the words "at my death" substitute throughout "at the death of the survivor of myself and my wife," and for the words "in my lifetime" substitute "in the lifetime of such survivor." In Form No. 59A sons' as well as daughters' shares must vest on marriage under age; *cf.* Stat. Will Forms, No. 10.

(*m*) This Form is not applicable where children's shares are settled. In this case (if the wife is to have no power to appoint) the last trust in sub-clause (1) of Form No. 55, *supra*, should be used, followed by sub-clause (2) of that Form.

Settlement of children's shares.

(*n*) This Form (No. 60) will follow after Forms Nos. 55, 56 and 57, *supra*. The shares of sons as well as daughters may be settled in the same way; then the reference will be to a "child's" share. Protected life interests may be given to sons, Form No. 53, *supra*, and the necessary alterations, *e.g.*, power to appoint life interests to wives as well as husbands, made in the above Form. The brackets in Form No. 60 show the variations requisite when the wife takes a life interest or power of appointment, and when sons' shares are settled as well as daughters' shares.

tions are hereinafter included in the description of such daughter's [child's] share (subject to any advancement which may be made for [his or] her benefit under the power for that purpose hereinbefore mentioned), UPON TRUST to pay the income thereof to such daughter [child] for [his or] her life [and in the case of a daughter] without power of anticipation during any coverture:(o)

Income to be paid to each daughter [*or* child] for life.

(3) AFTER [his or] her death the capital and income of the share of such daughter [child] or so much thereof respectively as shall not have been paid or applied under any trust or power affecting the same shall be held:

Trusts for issue of daughter [child].

IN TRUST for all or any one or more exclusively of the others or other of the issue of such daughter [child] (whether children or remoter descendants) at such time and, if more than one, in such shares with such provisions for maintenance, education, advancement and otherwise at the discretion of any persons, and with such gifts over and generally in such manner for the benefit of such issue or some or one of them as such daughter [child] shall, by deed revocable or irrevocable, or by Will or Codicil appoint,(p) but so that under any appointment a child of the appointor shall not (otherwise than by way of advancement) take a vested interest except upon attaining the age of twenty-one years or upon marriage:

AND in default of and until and subject to any such appointment IN TRUST for all or any the children or child of such daughter [child] who attain the age of twenty-one years, or being female marry under that age, and, if more than one, in equal shares.

(4) ANY child of a daughter [child] of mine who or whose issue takes any part of the share of such daughter [child] under any appointment by such daughter [child] shall not in the absence of any direction by such daughter [child] to the contrary take any share in the unappointed part without bringing the share or shares appointed to him or her or his or her issue into hotchpot and accounting for the same accordingly.

Hotchpot.

(o) A life interest must not be given direct to a surviving husband of a daughter: *Re Norton* [1911], 2 Ch. 27; 80 L. J. Ch. 119; but the daughter may be given a power to appoint a life interest to her husband. A child on marriage will be able to give receipts though under age: L. P. Act, 1925, s. 21.

Interest and powers of daughter's husband.

(p) A joint power of appointment may be given to the daughter and her husband, but not power to *any* husband as survivor: *Re Abbott* [1893], 1 Ch. 54; 62 L. J. Ch. 46; see *Re Norton, supra*: *Re Hewett* [1915], 1 Ch. 810; 84 L. J. Ch. 715. Care must be taken not to infringe the perpetuity rule when an appointment is made. No statutory form has been prescribed for the settlement of a child's share.

Advancement clause for issue of a daughter [*or* child].

(5) The statutory power of advancement shall apply for the benefit of any child or other issue of a daughter [child] of mine.

Capital of daughter's [child's] share in default of daughter's [child's] children to accrue to other children of testator.(*q*)

(6) If any daughter [child] of mine shall not have any child who under the trust in default of appointment hereinbefore contained attains a vested interest in [his or] her share, Then subject to the trusts and powers hereinbefore declared in favour of such daughter [child] of mine and [his or] her issue, the original share of such daughter [child] of mine, and also any share or shares accruing under this provision, and all accumulations (if any) of income, or so much thereof respectively as shall not have become vested or been paid or applied under any trust or power affecting the same, shall accrue to and be held **[**In trust for such persons and purposes as such daughter [child] of mine shall from time to time or at any time by deed, revocable or irrevocable, or by Will or codicil appoint, And in default of and subject to any such appointment**]**:

In trust for my other (*r*) children or child (not being daughters [children] or a daughter [child] the trusts for whom and whose issue have failed or determined otherwise than by the absolute payment or transfer of a share) who attain the age of twenty-one years, or being female marry under that age, and, if more than one, in equal shares:

Provided that—

(i) Every further share accruing to a daughter [child] of mine, or which would have so accrued if [he or] she had survived me, shall be retained and held by my Trustees upon and subject to such of the trusts and powers hereby declared concerning the original share of that daughter [child] as shall be then subsisting or capable of taking effect, and as one fund for all purposes (including any hotchpot provision) (*s*) with such original share, and the gift thereof shall not fail by reason only of [his or] her death in my lifetime;

(ii) Every further share accruing to a daughter [child] of mine shall be subject to the like powers of advancement as the original share of such daughter [child] [and the provision as to the share of a son dying in my lifetime leaving issue living at my death

Gift over to other children better than a trust for next-of-kin.

(*q*) This Form generally gives effect to the testator's wishes more effectually than a trust for the statutory next-of-kin of a deceased daughter.

(*r*) "Others or other" not survivors, see Theobald, 7th ed., 686, *et seq.*

(*s*) Theobald, 7th ed., 776; *Re Marquis of Bristol* [1897], 1 Ch. 946; 66 L. J. Ch. 446; *Re Cavendish* [1912], 1 Ch. 794; 81 L. J. Ch. 400; *Re Fraser* [1913], 2 Ch. 224; 82 L. J. Ch. 406; *Re Wood* [1913], 2 Ch. 574; 83 L. J. Ch. 59.

shall apply to shares which would have accrued to a son under this provision if he had survived me (*t*)]:

Power for daughters to appoint life interests to surviving husbands.

(7) EACH daughter of mine may, notwithstanding any of the trusts hereinbefore contained concerning such daughter's share [*or* legacy], from time to time or at any time while not under coverture by deed, revocable or irrevocable, and whether covert or sole,(*u*) by Will or codicil appoint to or for the benefit of any husband who may survive her,(*v*) during the residue of his life [until he marries again] or for any less period (subject or not to such conditions, and with such gifts over and discretionary or other trusts for the benefit of her husband and issue or otherwise as such daughter may think fit) all or any part of the annual income of her share, as well original as accrued and to accrue, under the trusts aforesaid [*or* of the legacy hereinbefore bequeathed to her], or of so much thereof as shall not before her death have been paid or applied under any of the powers hereinbefore mentioned; And upon any such appointment the trusts and powers herein limited to take effect after the death of the daughter so appointing shall take effect subject to the interest limited by any such appointment.(*w*)

(*t*) If sons' shares are also settled, sub-clause (3) of Form No. 55, *supra*, will be omitted as well as these last words in square brackets.

(*u*) See the Wills Act, 1837, s. 18, which revokes a Will on marriage, save when made in contemplation thereof under L. P. Act, 1925, s. 177.

Validity of power.

(*v*) The power can be exercised in favour of a person born after the testator's death; but care must be taken that the remainders over are not invalid: *Re Bullock* [1915], 1 Ch. 493; *Re Garnham* [1916], 2 Ch. 413.

(*w*) Where sons' shares as well as those of daughters are settled the Form will be as follows:—

Power for children to appoint life interests to surviving wives or husbands.

EACH child of mine may, notwithstanding any of the trusts hereinbefore contained concerning such child's share [*or* legacy], from time to time or at any time by deed, revocable or irrevocable, or by Will or codicil appoint to or for the benefit of any husband or wife who may survive the Appointor during the residue of the life of such husband or wife or any less period (and subject to such conditions (if any), and with such gifts over and discretionary or other trusts for the benefit of the husband or wife and issue, or otherwise of the Appointor, as the Appointor may think fit), all or any part of the annual income of the share of the Appointor, as well original as accrued and to accrue, under the trusts aforesaid [*or* of the legacy hereinbefore bequeathed to the Appointor], or of so much thereof as shall not before the death of the Appointor have been paid or applied under any power affecting the same; And upon any such

[Power for daughters [children] to appoint separate trustees.]

[(8) EACH daughter [child] of mine may by deed, with the assent of my Trustees, appoint two or more separate trustees of [his or] her share, as well original as accrued and to accrue, in the Trust Fund [*or* of the legacy hereinbefore bequeathed to [him or] her], and thereupon such share [*or* legacy], or the investments representing the same, shall be paid or transferred as soon as may be [after the death [or second marriage, which first happens] of my wife] to such separate trustees upon the trusts hereby declared concerning the same, and thenceforth my Trustees shall cease to be responsible in relation thereto, And during the residue of the life of such daughter [child] a new trustee or new trustees thereof may from time to time be appointed by [him or] her.(*x*)]

[Trustees on marriage of daughter [child] may declare other trusts of share [*or* legacy].(*y*)]

[(9) (i) NOTWITHSTANDING the trusts hereinbefore contained respecting the share in the Trust Fund of [*or* the legacy hereinbefore bequeathed to] each daughter [child] of mine as aforesaid, my Trustees may, by deed executed by them previously to and in consideration of the marriage of any such daughter [child]. but with the consent of [such child] her and [his or] her intended [wife or] husband if she [the child] shall have then attained the age of twenty-one years, or otherwise with the consent of such intended [wife or] husband and of her [the] guardians

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appointment the trusts and powers hereby limited to take effect after the death of the Appointor shall take effect subject to the interest limited by any such appointment : Provided that the power last aforesaid to appoint by deed shall not be exercisable by a daughter of mine while under coverture.

If sons' shares are settled, but they are intended to take absolutely at twenty-five (see the notes to Form No. 61, *infra*), the following clause should be added :—

No. 60A.

Power to determine trusts of each son's share on his attaining twenty-five.

NOTWITHSTANDING any of the trusts hereby declared concerning the share, as well original as accruing or to accrue, of any son of mine who attains the age of twenty-five years, my Trustees may at their absolute discretion, without being liable to account for the exercise of such discretion, by writing declare that the trusts and powers affecting the whole or any part of such share shall thenceforth cease, and my Trustees shall as soon thereafter as practicable transfer the premises to which such declaration relates, or any property appropriated to answer the same, to such son absolutely.

(*x*) This sub-clause may be omitted if brevity is desired, see T. Act, 1925, s. 37.

(*y*) This sub-clause may also be omitted where brevity is desired.

[of such child], revoke from and after the intended marriage all or any of the trusts, powers and provisions hereinbefore declared concerning the share, as well original as accrued and to accrue, in the Trust Fund [*or* the legacy] of the same daughter [child], and may either direct the whole or any part or parts thereof to be held immediately after the marriage IN TRUST for such daughter [child] absolutely, or may declare and limit such other trusts, powers and provisions to take effect after the intended marriage and concerning the same share [*or* legacy], or any part or parts thereof, as to my Trustees with such consent as aforesaid shall seem proper, and if thought expedient may constitute any other persons trustees of the same share [*or* legacy], and may [after the death [or second marriage, which happens] of my wife] transfer the same or the investments representing the same to such persons accordingly, whose receipt in writing shall be a sufficient discharge for the same;

(ii) THE power lastly hereinbefore contained may be exercised in contemplation of a second or any subsequent marriage of the same daughter [child], but, nevertheless, without prejudice to any previous exercise thereof on the occasion of any earlier marriage.]

[Power to modify trusts on marriage.]

[(10) ANY such daughter [child] of mine by any deed executed before or after [his or] her marriage, may, with the concurrence of her [the] husband [or wife] or intended husband [or wife of such child], modify the power of appointment hereinbefore given to such daughter [child] over her [the] share in the Trust Fund [of such child] in favour of her [the] children or remoter issue [of such child] by making the same exercisable as to all or any part of such share by such daughter [child] and [his or] her [wife or] husband jointly by deed, revocable or irrevocable, And in default of and subject to any such joint appointment by the survivor of such daughter [child] and [his or] her [wife or] husband, in like manner or by Will or codicil.(z)]

No. 61.

Trust for children and issue of deceased children of testator all living at his death. Shares vesting at twenty-five or marriage.(a)

(1) *Trusts for children and issue of deceased children of testator all living at his death—Form No.* 59A, *substituting* "twenty-five" *for* "twenty-one."

Postponement of vesting until twenty-five, practice condemned.

(z) This sub-clause may be omitted if brevity is desired.

(a) Testators are sometimes desirous of postponing the vesting of legacies and shares of residue until the legatee attains the age of twenty-five years. This cannot be done in the case of an ante-nuptial settlement, as such a trust would be void for remoteness: Vaizey, 1228; though if created after 1925 the trust would be construed as if twenty-one were substituted for twenty-five:

Alternative method recommended

L. P. Act, 1925, s. 163. It is feasible in the case of Wills, where the legatees must be in existence at the testator's death (see *Re Ricketts* [1910], 103 L. T. 278); most of the difficulties have been removed by T. Act, 1925, s. 31, but by reason of the fact that the legatee can raise money on his share with the aid of a policy after he attains twenty-one, the practice must be condemned. It is clearly better for protecting improvident children to settle the shares in the ordinary way (see last Form), and to give the trustees a discretionary power (No. 60A, *supra*) to transfer the share to the beneficiary on attaining twenty-five absolutely: this prevents the child from raising money, with the aid of a policy, on his expectant share between the ages of twenty-one and twenty-five; but as testators, notwithstanding the futility of the arrangement, sometimes insist on the vesting being postponed, the above Form (No. 61) is given, but is not recommended.

Old law.

For the old forms applicable see 21st ed., Vol. II, 879–84, and notes thereto.

Maintenance and accumulation where vesting postponed till twenty-five or marriage.

T. Act, 1925, s. 31, applies though the vesting is postponed till twenty-five, provided that the intermediate income goes with the child's share. No accumulations will be made between the age of twenty-one and twenty-five. After the child attains twenty-one the income of the share and of the accumulations will be paid to the child. Where the child attains an absolute interest in the share on marriage, the accumulations will be paid to the child whether or not of full age. The child does not have a vested interest in the income during infancy or till marriage within sub-s. (2) (i) (a), nor does the child become entitled to the capital on attaining twenty-one, hence the accumulations will go with the capital.

An express trust for maintenance or accumulation will now seldom be required, but when employed the following points must be borne in mind:—

Perpetuity rule applies as to maintenance.

(1) The provisions as to maintenance must comply with the perpetuity rule: *Re Blew* [1906], 1 Ch. 624; 75 L. J. Ch. 373. This will be the case under s. 31, *supra*.

Accumulations.

Periods authorised.

(2) The testator's power of directing accumulations of surplus income is restricted by L. P. Act, 1925, ss. 164–66; 1 Wolst. & Cherry, 11th ed., 416–23. He has three periods to choose from, see s. 164 (1)—

(i) Twenty-one years from his death. This is reckoned exclusively of the day of his death: *Gorst* v. *Lowndes* (1841), 11 Sim. 434; 10 L. J. Ch. 161; Theobald, 7th ed., 615, and cases there cited;

(ii) During the minority or respective minorities of any person or persons living or *en ventre sa mere* at his death;

(iii) During the minority or respective minorities of any person or persons who under the trusts of the Will would, for the time being, if of full age, be entitled to the income. This is not confined to persons born in the testator's lifetime: *Re Cattell* [1914], 1 Ch. 177; 83 L. J. Ch. 322.

Only one period may be selected.

(3) The testator may select only one of the three periods: *Wilson* v. *W.* (1851), 1 Sim. N. S. 288; 20 L. J. Ch. 365; *Jagger* v. *J.* (1884), 25 Ch. D. 729; 53 L. J. Ch. 201; *Re Cattell, supra*, at p. 186. But accumulations during a minority under the statutory power or under the general law are not reckoned as one of the periods: s. 165.

Trust for accumulation implied by general law.

Intermediate income to be disposed of.

(4) Though no express direction as to accumulation is inserted beyond the prescribed period, a trust to accumulate, where accumulation is necessary in the ordinary course, may (*e.g.*, in the case of a minority) be implied, see *Tench* v. *Cheese* (1855), 6 D. M. & G. 453; 24 L. J. Ch. 716, and other cases collected in Theobald, 7th ed., at p. 614. Hence, the intermediate income and the income of the accumulated fund must be dealt with between the expiration of the valid accumulation period and the date of vesting if an express trust for accumulation is employed. Having regard however to T. Act, 1925, s. 31, an express trust should seldom be required.

Maintenance.

(2) THE statutory provisions as to maintenance and accumulation of surplus income shall apply [without regard to whether or not any other income is applicable for a like purpose and without any obligation to apply a proportionate part only of the income].

Advancement.

(3) THE statutory power of advancement shall also apply.

No. 62.

Trust to accumulate for twenty-one years.(*b*)

(1) MY Trustees shall, for a period of twenty-one years from my death, stand possessed of the Trust Fund UPON TRUST to accumulate the income thereof in the way of compound interest by investing the same and the resulting income thereof from time to time in any investments in which my residuary estate is authorised to be invested (other than for the purchase of land only) and shall add the accumulations to the capital of that fund.

(2) AFTER the expiration of the said period the Trust Fund

Implied vesting of capital by gift of intermediate income.

(5) In every direction for payment of income during the period before a gift vests care must be taken that the income is not given, whether by way of maintenance or otherwise, in a manner which will operate to vest the gift: *Re Gossling* [1903], 1 Ch. 448; 72 L. J. Ch. 433; *Re Williams* [1907], 1 Ch. 180; 76 L. J. Ch. 41; see also *Re Ricketts* [1910], 103 L. T. 278; *Re L. Nunburnholme* [1912], 1 Ch. 489; 81 L. J. Ch. 347; *cf. Re Woolfe* [1920], 1 Ch. 184; 89 L. J. Ch. 11; *Re Ussher* [1922], 2 Ch. 321; 91 L. J. Ch. 521. Hence the use of an express direction that the gift of income shall not vest capital where s. 31 is not to apply.

Meaning of "minority."

(6) There should be no ambiguity in the draft as to the meaning of the word "minority," see *Milroy* v. *M.* (1844), 14 Sim. 48; 13 L. J. Ch. 266; *Maddison* v. *Chapman* (1859), 3 De G. & J. 536; 28 L. J. Ch. 450; *Fraser* v. *F.* (1863), 1 N. R. 430; Theobald, 7th ed., 587. There must be no confusion as to whether the testator means minority in the ordinary sense of infancy or the period during which vesting is postponed.

Best period to adopt for accumulation.

(7) If an express trust for accumulation is employed the best period to be taken is that of the minorities of persons who, if of full age, would be entitled to the income, for it is less likely to result in more than one period being adopted throughout the Will.

Meaning of accumulation.

(8) A direction to invest income must now be treated as a direction to accumulate though the resulting income may not be accumulated: 1 Wolst. and Cherry, 11th ed., 418; *Re Clutterbuck* [1901], 2 Ch. 285, 287; *Re Garside* [1919], 1 Ch. 132, 137; 88 L. J. Ch. 116.

Exclusion of maintenance.

(9) A provision excluding maintenance while an infant is in the custody or control of his father is good: *Re Borwick* [1916], 2 Ch. 304; 85 L. J. Ch. 732.

Purchase of land only.

(*b*) There is no power to accumulate for "the purchase of land only" for a longer period than the duration of minorities of persons who under the limitations would, if of full age, be entitled to the income: L. P. Act, 1925, s. 166, but this restriction does not apply if the accumulations are to be held as capital money for the purposes of the S. L. Act: *ib.*

Accumulations during minorities after the end of the twenty-one years.

Subject to this, an express trust to accumulate for the twenty-one years does not prevent the statutory power of accumulation during a minority (T. Act, 1925, s. 31) from operating after the expiration of the twenty-one years: L. P. Act, 1925, s. 165.

(including the said accumulations) and the income thereof shall be held on the trusts following, namely :—

No. 63.

Power to raise money for sons out of their shares.(c)

My Trustees may from time to time at their discretion, but during the lifetime [widowhood] of my wife only with her consent in writing, raise by mortgage, sale or otherwise, out of the share, whether vested or contingent, of any son of mine in the Trust Fund any sums not exceeding in the whole the sum of £—— for each son, and may pay any sums so raised to the son out of whose share it was raised for the purpose of placing him in business or otherwise for his benefit, and may make any payment absolutely or by way of loan, with or without taking any security for repayment, as my Trustees may, without being liable to account, think proper.

No. 64.

Declaration that sum paid or settled be taken as part payment of residuary share.(d)

Any and all capital sums or property which on the marriage of any child of mine or by way of advancement [have been or] shall be paid to him or her or settled by me on such marriage (including any capital sum or property covenanted to be paid or transferred by me) shall, in accordance with the directions of my Trustees, be taken as being so paid or settled in or towards satisfaction of his or her share in the Trust Fund [*or* the legacy hereinbefore bequeathed to him or her] [but this provision shall not extend to any property to which any issue of mine may under or in default of appointment become entitled under the trusts of my marriage settlement dated, &c., and such property shall not be brought into account].

(c) For the power to raise money by sale or mortgage : T. Act, 1925, s. 16 ; as to the protection of purchasers and mortgagees : *ib.*, s. 17.

"Satisfaction."

(d) See also Form No. 5A, *supra*. As to the effect of the above clause : *Wheeler* v. *Humphreys* [1898], A. C. 506 ; 67 L. J. Ch. 499 ; also *Re Pink* [1912], 2 Ch. 528.

Where a testator gives money to a person and then leaves him a similar amount by Will the legatee is entitled to both : *Hudson* v. *Spencer* [1910], 2 Ch. 285 ; 79 L. J. Ch. 506 ; and see *Re Gleeson* [1911], 1 Ir. R. 113.

When interest begins to run on advances.

Where advances made in the testator's lifetime are to be brought into account interest is reckoned at £4 per cent. : *Re Davy* [1908], 1 Ch. 61 ; 77 L. J. Ch. 67 ; *Re Poyser* [1908], 1 Ch. 828 ; 77 L. J. Ch. 482. Where the residuary gift takes effect at once, interest is calculated from the testator's death : *Re Whiteford* [1903], 1 Ch. 889 ; 72 L. J. Ch. 540 ; *Re Davy, supra ;* but where distribution ought to take place at a future date, interest begins to run from the date of distribution : *Re Lambert* [1897], 2 Ch. 169 ; 66 L. J. Ch. 624 ; Theobald, 7th ed., 777 ; and see *Re Willoughby* [1911], 2 Ch. 581 ; 80 L. J. Ch. 562 ; *cf. Re Hargreaves* (1903), 88 L. T. 100, which applies where the testator prescribes a valuation after his death ; as to ascertaining the income of the estate pending realisation : *Re Craven* [1914], 1 Ch. 358 ; *Re Hart* (1913), 107 L. T. 757 ; and 136 L. T. Newsp. 652 ; as to the treatment of the income where advances made before the period of distribution are to be brought into account : *Re Forster Brown* [1914], 2 Ch. 584 ; 84 L. J. Ch. 361 ; see also *Re Cooke* [1916], 1 Ch. 480 ; 85 L. J. Ch. 452 ; *Re Tod* [1916], 1 Ch. 567 ; 85 L. J. Ch. 668 ; as to the time for ascertaining the value of settled funds to be brought into account, and as to the payment of estate duty thereon : *Re Crocker* [1916], 1 Ch. 25 ; 85 L. J. Ch. 179. For other recent cases on "satisfaction and ademption," see *Re Young* [1914], 1 Ch. 976 ; 83 L. J. Ch. 453 ; *Re Arbuthnot* [1915], 1 Ch. 422 ; 84 L. J. Ch. 424 ; *Re Trollope* [1915], 1 Ch. 853 ; 84 L. J. Ch. 553 ; *Re Deprez* [1917], 1 Ch. 24 ; 86 L. J. Ch. 91 ; *Re Barker* [1918], 1 Ch. 128 ; 87 L. J. Ch. 166.

No. 65.

Ultimate gift of residue.

SUBJECT to the trusts and powers hereinbefore contained, the Trust Fund and the income thereof and all statutory accumulations (if any) of income, or so much thereof respectively as shall not have become vested or been paid or applied under any trust or power affecting the same, shall be held IN TRUST for —— absolutely, [and such gift shall not lapse by reason of his death in my lifetime, but the premises shall devolve as if he had survived me and died immediately after my death,(*e*) and this provision shall operate by way of direct gift to the persons who under his will or on his intestacy would have become beneficially entitled thereto if he had died possessed thereof, and shall not if he dies in my lifetime make the premises part of his estate so as to be liable for his debts and estate or other duty].

SECTION XI.

OPTIONS TO PURCHASE.

No. 66.

Power for son to purchase part of the property at a fixed sum.(*f*)

(1) IF my son —— shall within twelve months after my death [or if he shall be under the age of twenty-one years at my death, then within twelve months after he attains that age],

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(*e*) This Form avoids an intestacy.

Residue of a residue.

Care should be taken not to give "the residue" of any residuary estate or of the trust fund in the ultimate gift, but the fund itself should be given as in the text subject to the foregoing trusts, see Theobald, 7th ed., 234, *et seq.*

Option to purchase incumbered land, &c.

(*f*) Where the property in respect to which the option is given is subject to a mortgage, the person exercising the option is entitled to have the property conveyed to him free from the mortgage, as Ad. of E. Act, 1925, s. 35, does not apply: *Re Wilson* [1908], 1 Ch. 839; 77 L. J. Ch. 564.

Option overrides general trust for sale in equity.

So long as the option to purchase remains exercisable a general trust for sale remains in abeyance: *Re Barnes* (1883), W. N. 131. An option to purchase created after 1925 is an "estate contract"; unless a land charge is registered to protect it, a purchaser for money's worth will not be concerned therewith: L. C. Act, 1925, ss. 10, Class C (iv), 13 (2). A purchaser under a trust for sale is not concerned with any directions respecting the postponement of the sale: L. P. Act, 1925, s. 25 (2). A trust "either to retain or sell land" created after 1925 will be construed as a trust to sell with power to postpone: *ib.*, sub-s. (4); 1 Wolst. & Cherry, 11th ed., 178–79.

Direction to postpone sale.

Trust to retain or sell.

Postponement of assent.

Where an option to purchase is subsisting, it will generally be expedient for the executors to postpone the assent to the trustees for sale, till the option expires.

by a notice in writing given to my Trustees or to one of them, signify his desire to purchase the messuage known as —— and the garden and grounds held therewith at the sum of £——, then and in such case my Trustees shall sell the same to him at that price :

Statement of Trustees to be conclusive.

(2) UPON any sale or other dealing by my Trustees after the expiration of the said twelve months the statement in writing of my Trustees that no notice of intention to purchase has been given by my said son shall in favour of a purchaser or other person dealing with my Trustees for money or money's worth be conclusive evidence of the fact so stated.

No. 67.

Similar power where son is a trustee at a valuation.

(1) IF my son —— shall within twelve months after my death, by a notice in writing given to the other trustees of my Will, or to one of them, offer to purchase any land forming part of my residuary estate, then and in such case the land so offered to be purchased shall be sold to my said son, notwithstanding that he is a trustee, at a price to be agreed on between him and the other trustees of my Will, or if they are unable to agree, then at a price to be determined by the valuation of two independent persons, one to be nominated by each party, or by an umpire to be chosen by the two valuers before they proceed to act in the valuation :

(2) UPON any sale, &c. (*continue as in last Form to end*).

No. 68.

Power for sons to purchase real estate at a valuation.

(1) IF any of my sons, having attained the age of twenty-one years, shall within twelve months after my death, by a notice in writing to be given to my Trustees or any one of them, offer to purchase any land forming part of my residuary estate, then and in such case the land shall be sold to the son making such offer at a price to be agreed on between my Trustees and my said son, or if they are unable to agree, then at a price to be determined by the valuation of two independent persons, one to be chosen by each party, or by an umpire to be chosen by the two valuers before they proceed to act in the valuation :

(2) IF two or more of my said sons shall offer to purchase the same land under the said option, the preference shall be given to the eldest or elder of the sons making such offer, and, in order to give effect to such preference, any offer made by a younger son shall be deemed to be conditional on no offer being made by an elder son within the time aforesaid :

(3) ANY son of mine may exercise any such option notwithstanding that he may be a trustee of my Will, and in that case the notice shall be given to the other trustees of my Will who

may act in the matter as if the son giving the notice had not been a trustee :

Protection to purchasers.

(4) PROVIDED that no purchaser or other person dealing with my Trustees for money or money's worth shall after the expiration of twelve months from my death be concerned to see or inquire whether any of my sons shall have made such offer to purchase as aforesaid, nor be affected by notice that such offer has been made.

No. 69.

General power for a Trustee to purchase.

THE said —— may, notwithstanding his being a trustee of my Will, become the purchaser of any part of my real or personal estate at any public sale thereof or by private contract, provided in the latter case that the sale shall be conducted on behalf of my estate by my Trustees other than the said —— or shall be at a price fixed by a competent person named by such other trustees or trustee.

SECTION XII.

PROVISIONS AS TO INTERESTS IN BUSINESSES.

No. 70.

Power to arrange with executor who is a partner.(g)

IN all matters affecting my partnership affairs or accounts and in all other matters (if any) affecting my estate in which the said —— may be personally interested, including a sale of all or any part of my share or interest in the said partnership to the said —— or any other partner therein, the other executor or trustee or the other executors or trustees for the time being of my Will, exclusive of the said ——, may alone act in the settlement of all accounts and questions or in contracting for and effecting such sale, and in other matters affecting the said —— personally, with all the same powers and effect and with the like result as regards binding my estate and all persons claiming under my Will as if the said —— had not been an executor or trustee of my Will.

No. 71.

Power for Trustees to wind up share of testator in partnership business.

(1) WITH respect to my share and interest in the business of —— now carried on by me at —— in partnership with —— (*names*), under the style of —— & Co., my Trustees may adjust and settle all accounts and transactions relating to the said partnership business, and may wind up the affairs and concerns thereof, and ascertain the amount of my share and interest therein either according to the provisions of the Articles of

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(g) This clause is required in every case where one of the trustees is a partner or otherwise interested in the testator's business.

partnership under which the said business shall be carried on at my death or upon such other terms and in such other manner as may be agreed between my Trustees and my surviving partners with power for my Trustees to refer to arbitration or otherwise to compromise or settle any question that may arise in or about the winding up of the said business in such manner as they may think fit, and generally to do and execute all such acts and things in relation to the premises as may appear to them necessary or expedient, without being liable for any loss which may arise thereby [and in particular my Trustees may, without being liable as aforesaid take as correct such balance-sheet as may be furnished by the said firm, and it shall not be obligatory on my Trustees to verify the same or to call for the production of the books of the said firm (*h*)]:

Power for Trustees to permit testator's share of capital to remain in business for seven years. (*i*)

(2) My Trustees may, if they in their absolute discretion think fit, permit the whole or any part of the amount which on taking the accounts of the said partnership shall appear to be due to my estate as my share and interest in the said business (except undrawn profits) to remain in the said business as a loan for any period not exceeding seven years from my death, notwithstanding any change among the partners, but so that the repayment thereof, with interest at the rate of £5 per cent. per annum, shall be secured by the joint and several covenant or bond of the persons for the time being continuing to carry on the said business, either with or without any other security for the same, as my Trustees shall think fit:

Power to continue loan on security of debentures if firm taken over by company.

(3) If the business of the said firm shall be purchased or taken over by a limited company, my Trustees may permit such loan to continue and remain during the aforesaid period or any further period upon the security of debentures or debenture stock of such company, and the same shall be deemed to be authorised investments for the purposes of my Will.

No. 72.

Power for Trustees to

(1) With respect to the business of a —— now carried on by me at —— aforesaid or any other business in which I may be engaged at my death my Trustees may continue the same for

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(*h*) The words in square brackets enable the trustees to take the account furnished by the firm as correct. This is desirable in some cases.

(*i*) Sometimes the loan is authorised to remain so long as, *e.g.*, the testator's brother is a partner.

Effect of change of partners.

Under a power to lend money to a particular firm it is a breach of trust to continue the loan after a change in the members of the firm: *Re Tucker* [1894], 1 Ch. 724; 3 Ch. 429; 63 L. J. Ch. 223, 737; *Smith* v. *Patrick* [1901], A. C. 282; 70 L. J. P. C. 19.

so long as they may think fit, or discontinue the same at any time and wind up the affairs thereof, with power for my Trustees if and so long as they shall continue the business to employ therein the whole or any part of the capital which shall be employed therein at my death, and also such further part (if any) of my estate as they shall think expedient, and with power also to employ managers, agents and clerks, and also to admit any persons as partners with them in the business, and generally to act in the conduct of the said business as they shall in their absolute discretion think fit, without being answerable for any loss arising thereby :

continue or wind up business, with powers as to management of business.(*j*)

(2) DURING the continuance of such business by my Trustees the net profits (*k*) arising therefrom shall be applied in like manner as income arising from investments representing the proceeds of sale of such business if sold would be applicable.

Profits of business if carried on.

No. 73.

The same. A wider form.

WITH respect to the business of a —— carried on by me in partnership with —— under Articles of partnership dated the —— day of ——, 19—, I declare as follows :—

Power for Trustees to make arrangements for carrying into effect Articles of Partnership. (*l*)

(1) MY Trustees may make such arrangements as may seem to them desirable for carrying into effect the provisions of the said Articles or any extended or substituted Articles under which I may be carrying on the said business at my death, with power to determine in such manner as may be advised by counsel or otherwise any question which may arise as to the construction of such Articles or otherwise in relation thereto :

Power to vary Articles.

(2) MY Trustees may, if they shall think fit, vary the provisions of such Articles in such manner as may be agreed between them and my surviving partners :

Carrying on testator's business.

(*j*) Authorities on the following points will be found in Theobald, 7th ed., at p. 457 ; see also Chap. IV, *supra* :—

(1) That a testator's business cannot be carried on without authority, but under a power to postpone sale the business may be carried on during the postponement ; *cf. Re Marshall* [1914], 1 Ch. 192 ;

(2) That a simple authority to carry on the business does not authorise the executors to apply capital for the purpose which is not in the business at the death of the testator ;

(3) That authority to carry on business authorises the use of the business premises and permits them to be mortgaged for business purposes ;

(4) That an authority to trustees to carry on business means to all of them, and part of their number cannot alone carry it on.

Depreciation.

(*k*) The trustees can charge, against profits, costs of repairs and an annual sum for depreciation of plant : *Re Crabtree* (1912), 106 L. T. 49.

Bankruptcy.

(*l*) Trustees carrying on business in the testator's trade name are not partners under the Partnership Act, 1890, s. 1 ; they cannot be made bankrupt as partners under Bkcy. Act, 1914, s. 119 ; *Re Fisher & Sons* [1912], 2 K. B. 491 ; 81 L. J. K. B. 1246.

Power for Trustees to continue business.

(3) SUBJECT to the provisions of such Articles, if and so long as the same shall remain in force, my Trustees may continue the said business for such period after my death as they may think fit, with power to carry on the same either alone or in partnership with the persons (if any) who shall be my partners at my death or with any other persons, and upon such terms as to division of profits and otherwise as may be agreed on, and with power also to employ in the said business the whole or any part of my capital which shall be employed therein at my death and also such further part (if any) of my estate and effects as to my Trustees shall seem proper, and with power also to employ such managers, agents and clerks in or about the said business and to allow to them such salaries and wages as my Trustees shall think fit: And my Trustees shall have the same powers as to the mode of conducting the said business and otherwise in relation thereto as if they were the absolute owners thereof with any such partners:

Power to make arrangements for introduction of son into business.

(4) MY Trustees (subject as aforesaid) may make such arrangements as may seem to them desirable for the introduction at any time into the said business of any one or more of my sons whom my Trustees shall think fit to introduce into the said business, and for the employment of any such sons in the same business in the meantime as a manager or clerk or in any other capacity at such salary or wages and upon such terms as my Trustees shall think fit:

Power to advance capital to son so introduced.

(5) MY Trustees may at their absolute discretion advance to any sons of mine who shall be introduced into the said business as aforesaid either alone or jointly with any partners, or may continue in the possession or under the control of such sons either alone or jointly as aforesaid, the whole or any part of my estate and effects for the time being employed in such business, and also, if my Trustees shall think fit, any further part of my estate and effects, for such time and upon such terms and conditions, and either with or without security, as my Trustees shall think fit: And the capital so advanced to or left in the possession or under the control of any such sons either alone or jointly as aforesaid shall be considered as a debt to my estate, and shall carry interest at the rate of £5 per cent. per annum, but no son of mine introduced into the said business as aforesaid shall pay anything to my estate for the goodwill of the said business:

Power to leave

(6) MY Trustees may, if they think fit, leave the entire

management of the said business while so continued as aforesaid to the other partners (if any), or if there shall be no such partner, then to any managers to be appointed for that purpose by my Trustees, and my Trustees shall be under no obligation to attend personally to the said business or be in any wise responsible for any loss which may arise by their omission to attend personally to the said business or to interfere therein: And if one or more of the Trustees for the time being of my Will shall be unwilling to engage in and continue such business as aforesaid, he or they may allow his or their co-trustee or co-trustees to engage in and continue the same and to act alone in relation to the trusts of my Will so far as regards such business [notwithstanding that any trustee continuing the same shall be a partner in the said firm]:

management of business to partners or to co-trustee.

(7) MY Trustees for the time being carrying on the said business shall be entitled to retain and divide between themselves for their own use the annual sum of £—— out of the net profits of the said business belonging to my estate as a remuneration for their trouble:(m)

Trustees to be entitled to allowance for carrying on business.

(8) SUBJECT to the said Articles of partnership, my Trustees may discontinue and wind up the said business as far as regards my estate, either immediately after my death or at such other times as they shall think fit, and may make such arrangements in relation thereto as they may deem proper, and in particular my Trustees may—

Power to wind up business and to sell to a company.

(i) arrange or concur in arranging for the incorporation of a limited company to purchase the said business with or without other assets (with a view to carrying on the same) for such consideration, whether wholly or partially in cash, shares or securities or otherwise as my Trustees may think fit and so that such shares and securities shall be treated as authorised investments for the purposes of my Will;

(ii) arrange or concur in arranging for the sale of the said business with or without other assets to any subsisting company for such consideration as aforesaid and so that shares and securities taken in or towards satisfaction of the purchase-money shall be treated as authorised investments as aforesaid:

(iii) leave to any partner, agent or other person the collection of any outstanding debts;

(m) Where trustees are authorised to appoint one of their number to act as manager at a salary, the salary is a legacy and does not take priority over creditors: *Re Salmen* (1912), 56 Sol. J. 632.

Salaries.

(iv) give such time as my Trustees shall think fit for payment by any partners of the sum which under any such arrangement as aforesaid shall become payable by them to my estate, either with or without security ;

(v) appoint or concur in appointing such accountants, valuers and other persons as may be deemed proper for taking the accounts of the said partnership and for valuing any matters which may be capable of valuation ;

(vi) settle and adjust accounts, refer to arbitration or otherwise compromise and settle any questions and differences ;

(vii) generally have the same powers in relation to the winding up or disposal of the said business as if they were the absolute owners thereof :

Profits of business if carried on.

(9) DURING the continuance of such business as part of my estate the net profits (*n*) arising therefrom shall (subject to providing for the remuneration of my Trustees hereinbefore mentioned) be applied in like manner as income arising from investments representing the proceeds of sale of such business would, if sold, be applicable.

SECTION XIII.

POWERS OF TRUSTEES AND GENERAL PROVISIONS.

No. 74.

Investment clauses. Range of authorised investments.

(1) MONEY liable to be invested under the trusts of my Will may (*o*) be invested—

(i) In or on any investments for the time being authorised as investments for trust money, or

(ii) On real or leasehold securities in England, Wales or Northern Ireland [or in any British Dominion, Colony, State or Dependency] but not in the Irish Free State (whether by way of registered charge or otherwise [or subject to incumbrances or not]), or

(iii) In or on the stock or securities (*p*) of any British Dominion, Colony, State or Dependency (other than the Irish

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Repairs ; depreciation.

(*n*) The trustees can charge, against profits, costs of repairs, and an annual sum for depreciation of plant : *Re Crabtree* (1912), 106 L. T. 49.

(*o*) See *Re Burke* [1908], 2 Ch. 248 ; 77 L. J. Ch. 597.

Bearer securities.

(*p*) If desired insert "(not payable to bearer)" ; bearer securities are recommended as resulting in considerable savings being effected in regard to stamp duties in the case of voluntary settlements ; no express provision is required in regard to bearer securities : T. Act, 1925, ss. 7, 68 (13) ; but until sale they must be deposited at a bank in accordance with s. 7.

Free State), or any province thereof,(*q*) or any foreign Government or State (except Russia) or of any municipal corporation or power, gas, electric light, harbour or local authority in England, Wales or Northern Ireland or in any British Dominion, Colony, State or Dependency (other than the Irish Free State), or

(iv) In or on the bonds, mortgages, debentures or debenture stock, or guaranteed or preference [or ordinary] stock or (*r*) shares [not payable to bearer] of any [railway, tramway, canal, water, dock, harbour, electric light or power, gas or other like] company,(*s*) public or private, incorporated in the United Kingdom or any British Dominion, Colony, State or Dependency under the Companies Acts or under any special Act of the Imperial Parliament or of any general or special Act of the Legislature of any British Dominion, Colony, State or Dependency or by Royal Charter, and whether trading or otherwise carrying on business (*t*) in Great Britain, India or any British Dominion, Colony, State or Dependency [or elsewhere], which shall have paid dividends [at the rate of at least £ — per cent. per annum] on its ordinary stock or shares for at least three years prior to the date of investment, or

(v) On the security of any life or contingent interest in any real or personal property, together with an insurance on the life or other event, or

Power to purchase land.

(vi) In the purchase (*u*) and paying the cost of the purchase of any buildings, lands, perpetual rentcharges or other real

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Colonies.

(*q*) A power to invest in stock of any British colony or dependency does not authorise an investment in a province of a dependency: *Re Maryon-Wilson* [1912], 1 Ch. 55; 81 L. J. Ch. 73.

Shares.

(*r*) Power to invest in stock does not authorise an investment in shares: *Re Willis* [1911], 2 Ch. 563; 81 L. J. Ch. 8; but a contrary view has been taken in an unreported case.

"Company."

(*s*) As to what is a company: 26 L. Q. R. 259.

(*t*) See *Re Stanley* [1906], 1 Ch. 131; 75 L. J. Ch. 56.

(*u*) This power to purchase land will not be used if Form No. 75 is used. A power to postpone sale is implied: L. P. Act, 1925, s. 25; the powers of a tenant for life, with power to partition will be exercisable by the trustees for sale: *ib.*, s. 28; any money arising from the sale of land under the trusts for conversion would be available for the purchase of land to be held on trust for sale: *ib.*; independently of the direction to convey on trust for sale this would be implied: *ib.*, s. 32; which applies to settlements and Wills of personalty made after 1911. Until the executors' assent to the testator's land vesting in the trustees on trust for sale they have all the power of trustees for sale: Ad. of E. Act, 1925, s. 39. The following Forms may be substituted for sub-clause (1) if desired or that sub-clause may be cut down as shown by the words in brackets:—

Narrow range.

MONEY liable to be invested under my Will may be invested in any investments from time to time authorised by law for the estate or chattels real in or arising in England or Wales [or Northern Ireland] being either freehold (whether or not subject to manorial incidents or to a compensation rentcharge) or leasehold for any term of years, whereof not less than sixty years is unexpired at the time of purchase (with power to effect and maintain sinking fund policies), or

(vii) In making improvements on the property so purchased,

(viii) Provided that all interests in land shall be conveyed or assigned to my Trustees on trust to sell the same [and a power to appoint new Trustees corresponding to the power for that purpose hereinafter contained shall be inserted in every conveyance and assent on trust for sale]:

Supplementary powers.

(2) MY Trustees in addition to the powers conferred by sections ten and eleven of the Trustee Act, 1925, may make such arrangements generally on the reconstruction or winding up of any company as my Trustees may at their absolute discretion think fit :(v)

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investment of trust money or on real or leasehold securities in England or Wales, or on the stocks, shares or securities (not payable to bearer) of any company incorporated under any special Act of the Imperial Parliament, or on the security of any life interest in any real or personal property, together with an insurance on the life.

Trustee investments only.

MONEY liable to be invested under my Will may be invested in any investments from time to time authorised by law for the investment of trust money.

And see T. Act, 1925, ss. 1–11.

Allotment letters.

(v) This sub-clause is only required where company investments are authorised. Apart from T. Act, 1925, s. 10 (4), so much of the proceeds of sale of allotment letters as represented a bonus paid in shares belonged to the tenant for life and the balance was capital: *Re Northage* (1891), 60 L. J. Ch. 488; *Re Hume Nisbet* (1911), 55 Sol. J. 536; and see Theobald, 7th ed., 553.

Nature of bonus.

As to the cases in which, as between tenant for life and remainderman, a bonus is income or capital, see *Bouch* v. *Sproule* (1887), 12 A. C. 385; 56 L. J. Ch. 1037; *Re Alsbury* (1890), 45 Ch. D. 237; 60 L. J. Ch. 29; *Re Armitage* [1893], 3 Ch. 337; 63 L. J. Ch. 110; *Re Taylor* [1905], 1 Ch. 734; 74 L. J. Ch. 419; *Re Palmer* (1912), 56 Sol. J. 363; *Re Evans* [1913], 1 Ch. 23; 82 L. J. Ch. 12; *Re Wakley* [1920], 2 Ch. 205; 89 L. J. Ch. 321; *Re Speir* [1924], 1 Ch. 359; 93 L. J. Ch. 225.

Supplementary powers.

Loans for term certain.

Mortgage valuations.

Company powers.

Under T. Act, 1925, s. 10, trustees have power to lend money for a term of seven years certain, meeting *Vickery* v. *Evans* (1863), 33 Beav. 376; to contract that not more than two-thirds of the purchase-money arising on a sale of a fee simple or a term having at least 500 years to run may be left on mortgage without a valuation; to concur in schemes for reconstruction, sale and amalgamation of companies; to subscribe for new securities under conditional or preferential rights, to renounce such rights, to sell them and

Power to make contributory loans.

(3) My Trustees may [with such consent or at such discretion as aforesaid] lend money on any security hereinbefore authorised in conjunction with money lent by any other persons by way of contributory loan, and may accept the security in the names of my Trustees or in the name of one of them together with other names or another name [or may permit the same to be taken exclusively in the names of other persons, as may be deemed expedient(*w*)].

No. 75.

Power to invest in the purchase of land in England [or colonies] to

(1) My Trustees may [during the life of my Wife with her consent in writing and after her death at the discretion of my Trustees], instead of laying out all or any money held on the trusts of my Will in the other investments hereinbefore authorised, invest the same money in the purchase and paying the cost of

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Deposit at bank; calls.

treat the proceeds as capital. Under s. 11 they may pay money into a bank to a deposit or other account, the interest being treated as income, and may pay calls out of capital. There is, however, no statutory power to make contributory loans.

Release of part of security. Varying rate of interest, &c.

Apart from express power trustees may release part of a security on being satisfied that the remaining security will be sufficient, on the ground that they would otherwise be paid off: Lewin, 12th ed., 742; a tenant for life may with the consent of an incumbrancer vary the rate of interest and the provisions of the mortgage, hence trustees for sale, when in the position of mortgagors, have similar powers: S. L. Act, 1925, s. 70; L. P. Act, 1925, s. 28.

Marketable title.

A trustee whether purchasing or lending money on land may accept a shorter title than that provided by law (L. P. Act, 1925, s. 44) provided it is one which a person acting with prudence would have accepted: T. Act, 1925, s. 8 (3).

Contributory loans by trustees.

(*w*) A contributory loan is a breach of trust unless authorised expressly: *Webb* v. *Jonas* (1888), 39 Ch. D. 660; 57 L. J. Ch. 671; *Re Dive* [1909], 1 Ch. 328; 78 L. J. Ch. 248; and see *Stokes* v. *Prance* [1898], 1 Ch. 212; 67 L. J. Ch. 69.

Duty of trustees as to custody of bonds to bearer.

Where trustees were, independently of T. Act, 1925, s. 7, authorised to retain bonds to bearer, they might deposit them with bankers for the purpose of collecting dividends: *Re De Pothonier* [1900], 2 Ch. 529; 69 L. J. Ch. 773; but not with solicitors; *Field* v. *F.* [1894], 1 Ch. 425; 63 L. J. Ch. 233; nor can they do so under s. 7.

"Under their control."

Before 1926, the words "under their control" were used to show that bearer securities were not to be prohibited by a direction to invest in the names of trustees: *Re Roth* (1896), W. N. 16; 74 L. T. 50; these words are no longer necessary: *ib.*, s. 7 (1).

Title deeds.

Title deeds, where frequently required for reference, *e.g.*, in the development of a building estate, may be left in the custody of solicitors acting in the trust: *Field* v. *F.*, *supra*. In the absence of special circumstances, a trustee is not entitled to have title deeds and non-negotiable securities removed from the custody of a co-trustee and placed at a bank in a box accessible only to the trustees jointly: *Re Sisson* [1903], 1 Ch. 262; 72 L. J. Ch. 212. But under T. Act, 1925, s. 21, trustees may, at the cost of income, deposit documents with a banking or other proper company for safe custody.

As to handing over deeds relating to the legal estate in settled land to the tenant for life or statutory owners: S. L. Act, 1925, s. 98 (3), and as to endorsements to be made thereon: *ib.*

be held on trust for sale.(*x*)

the purchase of any messuages, lands, perpetual rentcharges or other real estate or chattels real in or arising in England, Wales or Northern Ireland [or in any British Dominion, Colony, State or Dependency], but not in the Irish Free State, being either freehold, enfranchised land (whether subject or not to any manorial incidents or compensation rentcharge), or leasehold for any term of years, whereof not less than sixty years is unexpired at the time of purchase, or in making improvements on the property so purchased, and the same shall be conveyed, or assigned to my Trustees [or in the case of colonial property to their nominees] UPON TRUST [with the like consent or at the like discretion] to sell the same properties, with full power to postpone the sale:

Trusts of land purchased.

(2) MY Trustees shall stand possessed of the net money to arise from any such sale and any other capital money arising under their statutory powers (after payment of the costs incidental thereto), Upon the trusts and subject to the powers and provisions (including this present power of purchasing land) upon and subject to which the money laid out under this present power would then have been held if the same had not been so laid out:(*y*)

Trust fund applicable as capital money.

(*x*) This Form makes the trust fund liable to be laid out in the purchase of land within the meaning of S. L. Act, 1925, s. 77; *Re Soltau* [1898], 2 Ch. 629; 68 L. J. Ch. 39; *Re Thomas* [1900], 1 Ch. 319, 323; 69 L. J. Ch. 198; in any case capital arising from land held on trust for sale may be invested or applied as "capital money": L. P. Act, 1925, s. 28. In view of the words "applicable as capital money for the purposes of the S. L. Act, 1925," in T. Act, 1925, s. 32 (2), *semble*, it is safer to provide expressly that the statutory power of advancement shall, when required, apply in personalty settlements and wills, though it is conceived that where there is a trust for sale it would apply without a reference. Trustees investing money in the purchase or on the security of leaseholds for a term of years are under no obligation to investigate the lessor's title: T. Act, 1925, s. 8 (2); L. P. Act, 1925, ss. 44, 182 (3) (4).

Statutory power of advancement.

Investigation of lessor's title.

Sinking fund policy and short leaseholds.

(*y*) If desired add: "(3) PROVIDED that if a sinking fund policy is taken out in the names and to the satisfaction of my Trustees in all respects, leasehold property having less than sixty years to run may be purchased under the foregoing power, and all premiums and other money required for taking out and keeping up such sinking fund policy shall be paid out of the income of the trust premises, and on a sale of such property the policy shall be included in the sale, and all money received in respect of any such policy shall be treated as capital."

Power to effect and maintain leasehold sinking fund policies is conferred by the "Administration Trusts": Statutory Will Forms, 1925, Form 8.

No. 76.

Power to manage land not in England.

(1) WITH reference to any real estate (including chattels real) for the time being subject to the trusts of my Will, my Trustees may raise (z) and pay out of the capital or income of the Trust Fund any money required to be paid on the exercise of the powers hereby or by statute conferred, and in the opinion of my Trustees properly payable out of capital or income, as the case may be:

(2) AS regards any land or immoveable property situated outside England the powers and indemnities given to my Trustees in regard to land in England by the English statute law shall apply as if such powers and indemnities were contained in my Will and the net rents and profits thereof shall be applicable in like manner as if they arose from land in England:

Foreign trustees.

(3) IN addition to the powers conferred by section twenty-three of the Trustee Act, 1925, my Trustees may appoint any persons or corporations outside the jurisdiction of the English courts to act as trustees hereof, in relation to any land or immoveable property situated outside England, and may pay to such trustees (out of capital or income as the case may require) any fees or other remuneration which may be customary in the country affected, and make such arrangements generally with any such colonial or foreign trustees as my Trustees may deem expedient without being responsible for any loss arising thereby.

No. 77.

Power to mortgage for payment of debts, &c.

NOTWITHSTANDING the trust for sale of my real estate hereinbefore contained, my Trustees may from time to time, if they think proper (in addition to the powers conferred by reference to section seventy-one of the Settled Land Act, 1925), raise any

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Statutory trust for sale and trust of rents and profits.

As regards Wills and settlements of personal estate coming into operation after 1911, if there is a power to invest in land it will be held on trust for sale with power to postpone the sale, and the net rents and profits after payment of outgoings will be applicable as income of investments representing the net proceeds of sale: L. P. Act, 1925, s. 32.

Continuance of a trust for sale.

In favour of a purchaser a trust for sale, whether express or implied (*e.g.*, on a purchase in breach of trust), will remain on foot till the land has been conveyed to the beneficiaries: *ib.*, s. 23.

Beneficial owners holding on trust for sale.

Where the trustees for sale are also absolutely and beneficially entitled to the proceeds of sale and the rents and profits until sale (*e.g.*, partners) they can deal with the property in their capacity of beneficial owners.

Sole surviving trustee.

Similarly a sole surviving trustee for sale if absolutely entitled can make a title notwithstanding L. P. Act, 1925, s. 42 (1); he cannot "concur" with himself, though he may convey to himself (*ib.*, s. 72), discharged from the trust for sale; such a conveyance is obviously unnecessary: L. P. (Amend.) Act, 1926, Sch., amending L. P. Act, 1925, s. 36.

Additional powers.

(z) See *Re Bellinger* [1898], 2 Ch. 534; 67 L. J. Ch. 580; T. Act, 1925, ss. 16 and 17. See also Settlements Personal, for additional powers in relation to land: Form No. 56, p. 159.

sums for the payment of all or any of my funeral and testamentary expenses, death duties (which in the opinion of my Trustees are properly payable out of capital) and debts, and the legacies hereby or by any codicil hereto bequeathed (whether my personal estate shall be deficient or not, and without applying any personal estate in making any such payment) [and any money required to be raised out of the capital of my residuary estate on the exercise of the powers hereby conferred (*a*)] by mortgage of all or any part of my real estate (including chattels real) upon such terms as my Trustees shall think fit.

No. 78.

Power of appropriation.(*b*)

(1) Form 6 of the Statutory Will Forms, 1925 (extending and varying the statutory power of appropriation), is incorporated in my Will:

Income and capital.

(2) My Trustees may in relation to the trusts hereof (subject to their right to refer any question to the court) decide what represents income and what represents capital, and may at their discretion, without being liable to account for the exercise of such discretion, exercise the powers conferred by section fifteen of the Trustee Act, 1925:(*c*)

As to licensed property.(*d*)

(3) My Trustees may at their discretion either surrender any licence connected with any hotel, public-house, or other licensed property from time to time subject to the trusts hereof which by reason of the duties imposed thereon they may consider it undesirable to retain, or may pay out of income all

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Power to mortgage unnecessary.

(*a*) The words in square brackets should be inserted when the last Form (No. 76) is also used. This power to raise money for payment of debts, &c., may generally be omitted in view of Ad. of E. Act, 1925, ss. 1–3, 39.

Stamp on conveyances for giving effect to an appropriation.

(*b*) It is desirable that the power (Ad. of E. Act, 1925, s. 41; for a power to value: T. Act, 1925, s. 22) should be exercisable without the consent of the legatee to avoid any claim being made for *ad valorem* conveyance duty (see now Fin. (1909-10) Act, 1910, ss. 73, 74), as on an implied sale by the trustees to the beneficiary of the land conveyed, see *Re Lepine* [1892], 1 Ch. 210; 61 L. J. Ch. 153; *Dawson* v. *I. R. C.* [1905], 2 Ir. R. 69; also article in 55 Sol. J. 61. As a rule appropriations will be given effect to, as regards land, by an assent in writing under Ad. of E. Act, 1925, s. 36. Where there was a trust for sale, a power of appropriation was implied: *Re Beverly* [1901], 1 Ch. 681; 70 L. J. Ch. 295; Theobald, 7th ed., 464, *et seq.*; *Re Craven* [1914], 1 Ch. 358; 83 L. J. Ch. 403; *cf. Re Cooke* [1913], 2 Ch. 661; 83 L. J. Ch. 76. The value of appropriated securities should be taken as at the date of appropriation: *Re Charteris* [1917], 2 Ch. 379, at p. 386; 86 L. J. Ch. 658; see also *Re Wragg* [1919], 2 Ch. 58; 88 L. J. Ch. 269.

Power of appropriation under general law.

Compromise.

(*c*) The powers to compromise, &c., have been so restricted by decisions before 1926, that it is sometimes safer to make them exercisable free from liability to account.

(*d*) This clause will only be used where licensed property forms part of the testator's estate.

duties required for renewing or keeping on foot any such licence, notwithstanding that the amount of the duties may be in excess of the enhanced value of the property attributable to the existence of the licence, with a view to the ultimate reduction by Parliament of such duties, or otherwise, and may take or defend any proceedings in connexion with any licensed property or the licences or duties connected with the same.

No. 79.

Power for a trustee who is personally interested to act.(*e*)

THE said —— may at his absolute discretion exercise or join in exercising or giving effect to any of the trusts or powers hereof or any statutory or other power, discretionary or otherwise, notwithstanding that he may be personally interested in the exercise or result thereof, or the said —— may permit his co-trustees or co-executors or co-trustee or co-executor to exercise such trusts or powers in like manner and with the same results in regard to binding my estate and any persons interested or to be interested therein as if such other trustees or executors had alone in regard to any matters in which the said —— may be personally interested as aforesaid been the trustees or executors of my Will, or the said —— may concur in any such matters as a mere formal party.

No. 80.

General wide indemnity.(*f*)

IN the professed execution of the trusts hereof no executor or trustee shall be liable for any loss to the trust premises arising by reason of any improper investment made in good faith or for the negligence or fraud of any agent employed by him or by any other executor or trustee hereof, although the employment of such agent was not strictly necessary or expedient, or by reason of any mistake or omission made in good faith by any executor or trustee hereof, or by reason of any other matter or thing except wilful and individual fraud or wrongdoing on the part of the executor or trustee who is sought to be made liable.

No. 81.

Power for professional executor or trustee to charge.

(1) ANY executor or trustee being a solicitor or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business transacted, time expended and acts done by him or any partner of his in connexion with the trusts hereof, including acts which

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(*e*) This is not a "common form"; the testator's express instructions must be obtained for its use, and its effect must be explained to him: *Re Sykes* [1909], 2 Ch., at p. 247; 78 L. J. Ch. 609.

Reasons for a wide indemnity.

(*f*) This clause is for use in special cases, see *Wyman* v. *Paterson* [1900], A. C. 271; 69 L. J. P. C. 32; *Re Sheppard* [1911], 1 Ch. 50; 80 L. J. Ch. 52. In some cases (*e.g.*, where the trusts are complicated or family disputes are likely to arise) the trustees might disclaim unless fully indemnified.

an executor or trustee not being in any profession or business could have done personally:

[Deficiency of assets.]

[(2) IN case of a deficiency of assets (g) the said remuneration shall have priority over legacies and annuities hereby or by any codicil hereto bequeathed save in the case of legacies and annuities given to my wife:]

[Provision against abatement of profit costs.]

[*or* (2) PROVIDED that any money payable under the foregoing provision shall not be liable to abatement by reason of any other legacy, gift or direction as to priority of payment of legacies herein or in any codicil hereto contained, but shall be paid free from all deductions, including legacy duty, if any:(h)]

[Delegation.]

[(3) THE power to delegate conferred by section twenty-five of the Trustee Act, 1925, may be exercised as if sub-sections (2) to (5) of that section had not been enacted and may be made irrevocable for a period not exceeding one year.]

No. 82.

Trust Corporation, remuneration of.(i)

IF a trust corporation (not being the Public Trustee) is appointed to be a trustee of my Will, I authorise such corporation to charge such fees and remuneration as would have been payable had the Public Trustee been appointed:

PROVIDED that if the same services are not rendered as would have been rendered if the Public Trustee was acting, the fees and remuneration shall be reduced proportionately.

No. 83.

Power to appoint new trustees.

(1) MY wife, during her life [widowhood], shall have power from time to time to appoint a new trustee or new trustees of my Will:(j)

Power to employ agents.

(g) A professional charging clause operates as a legacy and where the assets are insufficient will abate proportionately: *Re Brown* (1918), W. N. 118. A power to employ agents is given by T. Act, 1925, s. 23; to concur with other persons by *ib.*, s. 24; and to delegate trusts during absence abroad, *ib.*, s. 25. The latter section is amended by the L. P. (Amend.) Act, 1926, Sch. *Semble*, a power of attorney given by a person absolutely and beneficially entitled (*e.g.*, a partner), is valid, though he may also be a trustee for sale, without the aid of any statutory or other power.

It is conceived that a devise of trust or mortgage estates abroad will seldom, if ever, be required. It is useless in regard to England.

Solicitors' profit costs.

(h) See *Re Brown*, *supra*, and cases there cited. If the estate is insolvent, profit costs cannot be charged by the professional executor as against creditors.

(i) For a power for a trust corporation to be appointed registrar of notices: L. P. Act, 1925, s. 138. The court may authorise remuneration: T. Act, 1925, s. 42.

Power to appoint new trustees.

(j) This is a substantive power to appoint new trustees, but being general in form, operates as a nomination of a person to act for the purposes of the statutory power: T. Act, 1925, s. 36. Under *ib.*, s. 35, separate appointments of new trustees of the Will (as being the instrument declaring the trusts of the proceeds of sale) on the one hand and of assents and conveyances of land on trust for sale on the other hand must be made as the latter only relate to the legal estate; these, with the probate, will be produced to a purchaser, he is not

Disposition on trust for sale.

(2) THE said power (so long as subsisting) shall be inserted in and apply to every assent and conveyance of land on trust for sale where the proceeds of sale are to be held on the trusts of my Will:

Marginal notes.

(3) THE marginal notes shall be proved as part of my Will, but shall not affect the construction thereof.

SECTION XIV.

END OF WILLS AND CODICILS.

No. 84.

End of codicil.(k)

SUBJECT as aforesaid, I confirm my said Will [except so far as it is revoked or varied by my first [*or* second, &c.] codicil, and I confirm that [and my other] codicil[s]] (*continue in a codicil, as in next Form, using words in square brackets*).

No. 85.

Testimonium and attestation clause to Will or codicil.

IN WITNESS whereof I have hereunto set my hand the day and year first above written.(*l*)

[*Here insert Schedules if used.*]

Signed by the above-named ——
as [a Codicil to] his last Will
in the presence of us both
present at the same time, who
in his presence and the presence
of each other have hereunto
set our names as witnesses.
(*Testator's signature.*)

(*Two witnesses, adding addresses and descriptions.*(*m*))

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concerned with the trusts of the Will. If title is made by personal representatives the probate only is material to the purchaser. The Will is, however, material to the title if an assent has been made before 1926, or where equitable interests in land are being dealt with.

(*k*) This confirmation should be added at the end of every codicil. As to the effect where there are several codicils, and only one is referred to: *Follett* v. *Pettman* (1883), 23 Ch. D. 337; 52 L. J. Ch. 521.

(*l*) The date is at the beginning of the Will or codicil, see Forms Nos. 1 and 2, *supra*.

(*m*) The addresses and descriptions of the witnesses are not necessary, but are convenient for identification.

Gifts to attesting witness.

A witness must not be a legatee or the husband or wife of a legatee, or the legacy will fail: Wills Act, 1837, s. 15; Theobald, 7th ed., 119. Nor should a solicitor executor expressly entitled to charge be a witness: *Re Barber* (1886), 31 Ch. D. 665; 55 L. J. Ch. 373; *Re Pooley* (1888), 40 Ch. D. 1; 58 L. J. Ch. 1.

Alterations in Wills.

Any alteration should be signed or initialled both by the testator and the attesting witnesses: *In b. Blewitt* (1880), 5 P. D. 116; 49 L. J. P. 31.

PART III.

PRECEDENTS OF WILLS (PERSONAL), INCLUDING WILLS CONFERRING ABSOLUTE INTERESTS IN ALL KINDS OF PROPERTY.

SECTION I.

WILLS CONFERRING ABSOLUTE INTERESTS IN ALL KINDS OF PROPERTY.

No. I.

WILL *giving everything to* WIFE *or* HUSBAND.

Commencement.

I, A. B., of, &c. [*or* the Wife of C. B., of, &c.], hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last Will, which I make this —— day of ——, 19—, [in contemplation of my intended marriage with —— and I declare that this Will shall not take effect unless the said marriage is solemnised within six months from the date hereof (*a*)]:

Gift of entire estate to husband *or* wife.

SUBJECT to the payment of my funeral and testamentary expenses and debts, which with all duties shall be paid primarily out of my personal estate, I give all my real and personal estate (including any property in respect of which I have a general testamentary power of appointment to which I am not required expressly to refer (*b*) but not including the statutory power to dispose of entailed interests) to my Wife [Husband] absolutely, and appoint her [him] to be the executrix [executor] of my Will.(*c*)

(*a*) A marriage revokes a Will (see Wills Act, 1837, s. 18) unless expressed to be made in contemplation of the marriage pursuant to L. P. Act, 1925, s. 177. A devise of land only passes an equitable interest.

(*b*) This will not operate as the exercise of a special power. For the statutory power to dispose of entailed interests in possession: L. P. Act, 1925, s. 176.

(*c*) If the testator is tenant for life of any settled land, insert here an appointment of special executors: Form No. 3 (3), *supra*.

In witness whereof I have hereunto set my hand the day and year first above written.

Signed by the above-named A.B. [C.B.] as his [her] last Will in the presence of us both present at the same time, who in his [her] presence and the presence of each other have hereunto set our names as witnesses. } (*Testator's signature.*)

(*Signatures of two witnesses, with their addresses and descriptions.*)

No. II.

WILL *of a* Woman *married before* 1883 *in exercise of a power in her* Marriage Settlement, *and disposing of jewellery, &c.*

Commencement.

I, A. B., the Wife of C. B., of, &c. (*Form No.* 1, p. 669).

Bequest of jewellery, &c.

1. I bequeath (*describe jewellery, &c., excepted out of covenant to settle after-acquired property*) to my sister Jane ——, absolutely free of duty.

Appointment under general (*d*) testamentary power in Marriage Settlement.

2. In default of any child of mine attaining a vested interest under my Marriage Settlement dated, &c., and subject to any appointment made under any power therein contained in favour of my issue, I declare that I intend to exercise the general testamentary power of appointment thereby conferred on me to the full extent thereof in manner hereinafter appearing.

Gift of entire estate (except jewellery) to husband or to sister.

3. Subject to the payment of my funeral and testamentary expenses and debts, which with all duties (including the duties on the foregoing legacy) shall be paid primarily out of personal estate over which I have a general power of appointment, I give all my real and personal estate (not hereby or by any codicil otherwise specifically disposed of) to my Husband absolutely if he survives me, but if he dies in my lifetime, then to my said sister Jane —— absolutely.

4. I appoint my Husband to be my executor, but if he dies in my lifetime, then I appoint my said sister to be my executrix.

In witness, &c. (*Form No.* 85, p. 741).

(*d*) For the exercise of special powers, see Forms Nos. 6—8, pp. 671–3.

No. III.

WILL *of a* WIDOWER *or* WIDOW *giving everything to* CHILDREN *who are all of age.*(*e*)

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

Absolute gift to children living at testator's death or leaving issue then living.

1. SUBJECT to the payment of my funeral and testamentary expenses and debts, which with all duties shall be paid primarily out of my personal estate, I devise and bequeath all my real and personal estate (including any property in respect of which I have a general power of appointment to which I am not required to refer expressly, but not including the statutory power to dispose of entailed interests) to all or any my children or child living at my death, and if more than one in equal shares, but subject to any trust for sale implied by statute :(*f*)

Provision against lapse.

Provision to avoid double duties.

PROVIDED that, if any child of mine dies in my lifetime leaving issue living at my death, the share or interest to which such child would have been entitled if he or she had survived me shall go and devolve as if such child had survived me (*g*) and died immediately after my death, but this provision shall operate by way of direct gift to the person or persons (if any) beneficially interested under the Will or on the intestacy of such child, and shall not make the share or interest of such child part of his or her estate so as to be liable to debts or estate or other duty.

Executors.

2. I APPOINT my children (*naming them, being not more than four or less than two*) to be the executors of my Will and to be the trustees hereof for the purposes of any implied trust for sale.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

(*e*) If any children are under age, use Form No. 59A, p. 715. It is desirable in this case to give the estate to trustees on trust for sale, see Form No. 46, or Forms 47 and 48.

Implied trust for sale.

Lapse.

(*f*) If there is any land, a trust for sale will be implied before the gift in shares; an assent would then be made to not more than four of the children on trust for sale. See notes to Form No. 55, p. 713. As this is a gift to a class, s. 33 of the Wills Act, 1837, would not (apart from the words "living at my death") apply to save lapse. A general bequest does not exercise a power becoming operative after testator's death: *Re Young* [1920], 2 Ch. 427; 89 L. J. Ch. 614; see also *Re Jarrett* [1919], 1 Ch. 366; 88 L. J. Ch. 150. If the testator desires the issue of deceased children to take, then the residuary estate should be given to his trustees and Form No. 59A, p. 715, should be used.

(*g*) If there is a gift over to issue, they ought not to take vested interests until of full age, &c., see Form No. 59A, p. 715. If a child dies in the testator's lifetime, leaving issue, and it is ascertained that infants would take under the Will or on the intestacy of the child so dying, it will be desirable for the principal testator to make a new Will; but see *Re Smith* [1916], 2 Ch. 368; 86 L. J. Ch. 657.

No. IV.

WILL *of a* BACHELOR *giving everything to* UNMARRIED BROTHERS *and* SISTERS *absolutely.*

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

Gift of entire estate to brothers and sisters.

SUBJECT, &c. (*as in Prec.* I, *p.* 742, *down to the word* "refer"), to all or any my brothers and sisters living at my death, and, if more than one, in equal shares, but subject to any trust for sale implied by statute: And I appoint my brothers (*naming them, being not more than four or less than two*) to be my executors., and to be the trustees hereof for the purposes of any implied trust for sale.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

SECTION II.

WILLS (PERSONAL) OF REAL AND PERSONAL PROPERTY WHERE THERE IS A TRUST FOR CONVERSION INTO PERSONALTY.

No. I.

WILL *of a* MARRIED MAN *giving* RESIDUE *to his* WIFE *for life and after her death to his* ISSUE (*Simple Precedent*).

Commencement.

I, A. B., of, &c., hereby revoke all testamentary dispositions heretofore made by me and declare this to be my last Will which I make this —— day of —— 19—.

Appointment of executors and trustees.

1. I APPOINT —— of, &c., ——, of, &c., and —— of, &c. (hereinafter called my Trustees), to be the executors and trustees of my Will [and I bequeath to each of them who accepts the office of executor and trustee the sum of £—— [free of duty]]. [*If required, add appointment of special executors—Form No.* 3 (3), *p.* 670.]

Forms in Pt. I of the Statutory Will Forms to apply.

2. *Form No.* 5, *p.* 671, *Statutory Will Forms made applicable.*

3. *Bequest to wife of "personal chattels" and legacy—Form No.* 10, *p.* 675.

General devise and bequest on trust for sale.

4. I GIVE all the real and personal estate not hereby or by any codicil hereto otherwise specifically disposed of and which I can dispose of by Will in any manner I think proper either as beneficially entitled thereto or under any general power [including the statutory power to dispose of entailed property] unto my Trustees, Upon the administration trusts expressed in Form 8 of the Statutory Will Forms, 1925, and that form shall be incorporated in my Will and shall apply without any variation.

Definition of trust fund.

5. (1) My Trustees shall stand possessed of the investments

hereinbefore by reference directed to be made or authorised to be retained (including any part of my residuary estate remaining unconverted) and the investments for the time being representing the same (hereinafter called the Trust Fund) and of the annual income thereof Upon the trusts declared by Form 10 of the Statutory Will Forms, 1925, which is hereby incorporated in my Will and shall apply for the benefit of my wife and issue with the variation that the life interest of my wife shall be without power of anticipation during coverture :

Trusts for wife for life and then to issue.

Advancement clause.

(2) The statutory power of advancement shall apply for the benefit of my children and more remote issue.

Declaration that sum paid or settled be taken as part payment of residuary share.

6. ANY and all sums of money or property which on the marriage of any child of mine or by way of advancement [have been or] shall be paid to him or her or settled by me on such marriage (including any capital sum or property covenanted to be paid or transferred by me) shall be taken as being so paid or settled in or towards satisfaction of his or her share in the Trust Fund [but this provision shall not extend to any property to which any issue of mine may under or in default of appointment become entitled under the trusts of my marriage settlement dated, &c., and such property shall not be brought into account].

7. *Investment clauses— Form No.* 74, *p.* 732.

8. AS regards any land or immoveable property situated outside England the powers and indemnities given to my Trustees in regard to land in England by the English statute law shall apply as if such powers and indemnities were contained in my Will. [*Insert and adapt Form No.* 56, *Settlements Personal, p.* 159, *if required.*]

Appropriation clause.

9. FORM 6 of the Statutory Wills Form, 1925, is incorporated in my Will.

10. *Power for professional trustee to charge, Form No.* 81, *p.* 739.

Power to appoint new trustees, &c.

11. *Form No.* 83, *p.* 740.

IN WITNESS whereof I have hereunto set my hand the day and year first above written.

Signed by the above-named —— as his last Will in the presence of us both present at the same time, who in his presence and the presence of each other have hereunto set our names as witnesses. } (*Testator's signature.*)

(*Two witnesses, adding addresses and descriptions.*)

No. IA.

WILL *of a* MARRIED MAN *giving* LEGACIES *and* ANNUITIES *and the* RESIDUE TO WIFE *for life, and after her death to* ISSUE *as appointed by her in default to children.* VARIATION *where* WIFE *is not given a power of* APPOINTMENT, *or where she takes an interest only during* WIDOWHOOD *or where* DAUGHTERS' *or* CHILDREN'S *shares are settled.*(*h*)

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1. *Appointment of executors and trustees and legacy to each who acts—Form No.* 3, *p.* 670.

2. *Appointment of guardians, if required—Form No.* 4, *p.* 671.

3. *Form No.* 5, *p.* 671, *Statutory Will Forms, Pt. I, made applicable.*

4. *Bequest to wife of "personal chattels," and legacy in priority to other legacies—Form No.* 10, *p.* 675.

5. *Other specific legacies, if desired—see Forms under heading "Specific Legacies," Nos.* 9—16, *pp.* 674–79.

6. *Other pecuniary legacies* (*e.g., legacies to servants, Form No.* 18, *p.* 681)*—see Forms under heading "Pecuniary Legacies," Nos.* 17—27, *pp.* 681–88.

7. *Charitable legacies—see Forms under heading "Charitable Legacies," Nos.* 29—35, *pp.* 690–94.

8. *Reversionary legacies—Form No.* 28, *p.* 690.

9. *Annuities—see Forms under heading "Annuities," placing immediate before reversionary annuities, Nos.* 36—44, *pp.* 695–702.

10. *Directions that legacies and annuities are to be free from duties, &c.—Form No.* 45 *or* 45A, *pp.* 703–4.

11. *General devise and bequest on trust for sale by reference to Statutory Will Forms—Form No.* 46, *p.* 704.

12. *Definition of Trust Fund and trusts thereof—Form No.* 49, *p.* 708.

13. *Income to wife for life* [*or during widowhood*]. *Trusts for issue as wife shall appoint, in default to children equally at twenty-one or marriage—Form No.* 51, *p.* 709,(*i*) *by reference to Form* 9

(*h*) This skeleton Precedent shows how the preceding forms should be made use of. The practice notes to the Forms should be carefully attended to.

Variation where wife is not to have power of appointment.

(*i*) If the wife is not to have a power of appointment, use Form No. 59, p. 715. Save that if the children's shares are to be settled, use Form No. 51A, then after the wife's life interest the trust will be "In trust for all or any my children or child who attain twenty-one years or being female marry under *of the Statutory Will Forms, which includes a hotchpot clause; the statutory power of advancement is made applicable.*

14. [*Trust of income after second marriage of wife if she takes the income during widowhood only, but is given a power of appointment during her life—Form No.* 58, *p.* 715.]

[15. *Settlement of daughters' or children's shares—Form No.* 60 *p* 716.]

16. *Declaration, if required, that any sum paid or settled by the testator during his lifetime shall be taken as part payment of residuary shares—Form No.* 64, *p.* 724.

17. *Ultimate gift of residue—Form No.* 65, *p.* 725, *which will only be used if all the testator's children are infants and unmarried.*

18. *Options to purchase if desired—see Forms under "Options to Purchase," Nos.* 66—69, *pp.* 725–27.

19. *Provisions as to the testator's business, if required—see Forms under heading "Provisions as to Interests in Businesses," Nos.* 70—73, *pp.* 727–29.

20. *Investment clauses—Form No.* 74, *p.* 732.

[21. *Power to invest in the purchase of land in England or colonies, if desired, and the power is not taken in the first sub-clause of the last Form—Form No.* 75, *p.* 735.]

[21A. *Additional powers if required; adapt Form No.* 56, *Settlements Personal, p.* 159.]

[22. *Power to manage land not in England—Form No.* 76, *p.* 737.]

[23. *Power to mortgage for payment of debts, &c., if required—Form No.* 77, *p.* 737.]

[24. *Power of appropriation, &c.—Form No.* 78, *p.* 738.]

25. *If required, power for a trustee who is personally interested to act—Form No.* 79, *p.* 738.

26. *General wide indemnity to executors and trustees—Form No.* 80, *p.* 739.

27. *Power for professional trustees to charge—Form No.* 81, *p.* 739.

28. *Power for wife to appoint new trustees—Form No.* 83, *p.* 740.

IN WITNESS, &C.—*Form No.* 85, *p.* 741.

(*After the testimonium add schedules of legacies, if required, in which case the attestation clause and signature will be at the foot of the schedules.*)

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that age and, if more than one, in equal shares." This will be followed by sub-clause (2) of Form No. 55, p. 714. Sub-clause (3) of that Form will only be used when the sons' shares are not settled. The hotchpot clause, Form No. 56, p. 714, will be omitted, but the advancement clause (Form No. 57 or 57A, p. 715) will be used.

No. II.

SHORT FORM *of* WILL *of a* MARRIED MAN *giving directions contained in a* SCHEDULE *for the disposal of his estate.*(*j*)

I, A. B., of, &c. (*Form No.* 1, p. 669). Commencement.

1. *Appointment of executors and trustees. Form No.* 3, *p.* 670.

2. *Appointment of guardians, if required. Form No.* 4, *p.* 671.

3. *Part* I *of the Statutory Will Forms to apply. Form No.* 5, *p.* 671.

General devise and bequest on trust to give effect to instructions in schedule.

4. (i) I DEVISE AND BEQUEATH to my Trustees absolutely all the real and personal estate which I can dispose of by Will in any manner I think proper, either as beneficially entitled thereto or under any general power (not including the statutory power to dispose of entailed property and except any power which I am required to mention expressly), UPON TRUST to give effect (as nearly as practicable) to the instructions contained in the Schedule to my Will:

Power to execute settlements.

(ii) FOR the purposes aforesaid my Trustees may at their absolute discretion, without being liable to account for the

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The advantages of an executory Will.

(*j*) This precedent is intended for use either where there is not sufficient time to prepare the Will in detail (*e.g.*, at a death bed), or where the testator desires to settle property or otherwise carry out any complicated arrangements by his Will on a "sheet of notepaper."

The desire for extreme brevity in Wills.

Many testators bring ill-advised pressure to bear on their solicitors to produce a short document which they imagine they can understand. The result frequently is that the common forms, designed to meet points arising under the existing law, are mutilated out of recognition, necessary powers and machinery are omitted, and the Will has to be construed by the courts, when the testator's wishes may or may not be carried out. It has been suggested that some difficulties may arise involving an application to the court by the adoption of executory forms of Wills; this is not the case when the discretion given to the trustees is sufficiently wide.

In the case of an executory document the necessary machinery can, if required, be worked out later, and justice done between the parties without the aid of the court. Hence the rule should be either to work out the instructions properly or not to attempt to do so in the Will.

The above Precedent will enable a solicitor to attend upon his client with the Will prepared in the above form, leaving the schedule in blank to be filled up when the instructions are given. He should, however, take a copy of the schedule to this Precedent with him as a guide in preparing the one to be adopted. A similar Precedent applicable to a realty Will is contained in Wills (Real), *infra.*

The need for an executory form of Will is less pressing after 1925, seeing that wide powers are given to trustees for sale (L. P. Act, 1925, s. 28, by reference to the S. L. Act, 1925) and to executors (Ad. of E. Act, 1925, s. 39) and to trustees generally by T. Act, 1925; moreover by incorporating the Statutory Will Forms, 1925, much machinery can be dispensed with. Still, if the wishes of the testator are unknown and a death bed Will is required, an executory Will may be the only safe way to deal with the situation.

exercise of such discretion, execute all such assents, settlements, vesting instruments and dispositions as they may deem expedient:

Settlement to have effect in equity as from testator's death.

(iii) ANY such settlement or disposition may contain all such powers, directions and provisions as my Trustees may consider necessary or expedient, and shall have effect in equity so far as may be required as from my death:

Settlements to be binding as if made under order of Court.

(iv) ANY such settlements or dispositions executed by my Trustees shall be binding on all persons interested under my Will as if the same had been executed pursuant to an order of a Court of competent jurisdiction and notwithstanding that the same may contain any provisions which may appear to vary the instructions in the Schedule to my Will:

Expert advice.

(v) MY Trustees may act on expert advice, and shall not be liable for any mistake occurring in such advice.

IN WITNESS whereof I have hereunto set my hand the day and year first above written.

THE SCHEDULE.(*k*)

1. Specific legacies :—

(1) To my wife my house, No. 10, —— Street, in the county of London, and all its contents (except money and securities for money), and the stables at the rear thereof, and all my "personal chattels" not otherwise specifically disposed of by my Will.

(2) To —— my —— ring.

2. Pecuniary legacies :—

(1) To my wife £1,000, to be paid within three months of my death, in priority to all other legacies.

(2) To each trustee who acts £——.

(3) To —— £——.

(4) To —— £—— if and when he attains full age, to be set aside by Trustees and carry interest at £5 per cent. from my death.

(5) To each of my servants (including servants in receipt of weekly and monthly wages), if in my service and not under notice at my death, £10 in addition to wages.

3. Charitable legacies :—

(1) To the —— Hospital £——.

(2) To the —— Institution £——.

(*k*) This schedule will be varied to give effect to the testator's wishes in each case.

4. Annuities :—

(1) To —— £—— per annum for life.

(2) To —— £—— per annum for life.

Government or other annuities may be purchased, but without prejudice to the powers given by Form 5 of the Statutory Will Forms, 1925.

5. All legacies and annuities to be paid and enjoyed free of death duties.

6. Residuary real and personal estate to be held on the administration trusts in Form 8 of the Statutory Will Forms, 1925, which form is to be incorporated.

7. Residue to be held on following trusts :—

(1) Invest—wide range of investments. Power to vary investments.

(2) Income to my wife for life.

(3) After her death capital and income to my issue as my wife appoints by deed or Will and in default of appointment to my children in equal shares who attain full age or being female marry. Shares of any of my sons who predecease me and leave issue to go to their issue at twenty-one, or marriage in case of females, in equal shares *per stirpes*.

(4) Usual hotchpot provision.

8. Statutory power of advancement to apply.

Daughters' shares, original and accruing, to be settled in usual way for the benefit of themselves and their issue. Power to appoint life interests to husbands. Usual provision for accruer to other children on failure of trusts.

9. Trustees to have power to exercise the statutory power of appropriation without obtaining any consents and free from the statutory restrictions (professional trustees to have power to charge) and trustees to have all such other powers as they may in their absolute discretion deem expedient for the purpose of giving full effect to my wishes and administering my estate.

10. Trustees to have full indemnity.

11. My wife to have power to appoint new trustees.(*l*)

Signed, &c. (*continue Form No.* 85, *p.* 741).

(*l*) If a copy of this schedule is at hand when instructions are taken from the testator, it may prevent some point being overlooked. The schedule contains a scheme for dealing with an estate on usual trusts, and it will be seen that the Will is about one-twentieth the length it would be if worked out.

The use of schedule for taking instructions.

No. III.

SHORT FORM *of* WILL *of a* WIDOWER *giving all his property* IN TRUST *for his* CHILDREN *equally, some of whom are* INFANTS. (*For a small estate.*)

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

Appointment of executors and guardians.

1. I APPOINT, &c. (*Form No.* 3, *p.* 670), And I appoint my Trustees to be the guardians of my infant children.

General devise and bequest on trust for children equally.

2. (1) I DEVISE AND BEQUEATH all my real and personal estate (including any property in respect of which I have any general power of appointment except where I am required to refer expressly to the power and not including the statutory power to dispose of entailed property) unto my Trustees, Upon the administration trusts expressed in Form 8 of the Statutory Will Forms, 1925, which form is incorporated in my Will and shall apply to the said property :

(2) MY Trustees shall (subject as aforesaid) hold the said property or the net proceeds of sale thereof IN TRUST to divide the same among all or any my children or child living at my death who attain the age of twenty-one years or being female marry under that age, and if more than one in equal shares :

PROVIDED that if any child dies in my lifetime leaving issue living at my death, who attain the age of twenty-one years or being female marry under that age then the share of the child so dying shall be held IN TRUST for such issue as aforesaid and if more than one in equal shares :

(3) THE statutory powers of maintenance and advancement shall apply to my Will.

Power of appropriation.

3. (*Form No.* 78 (1) *and* (2), *p.* 738.)

Power for professional trustee to charge.

4. (*Form No.* 81, *p.* 739.)

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. IV.

WILL *of a* MARRIED WOMAN (*married after* 1882) *appointing Funds settled by the* WILL *of her* MOTHER *to her daughters in equal shares*,(m) ALSO *giving her* RESIDUARY ESTATE *upon trust for her* HUSBAND *for a* PROTECTED LIFE INTEREST *and subject thereto for her* CHILDREN *in equal shares.* SETTLEMENT *of all* CHILDREN'S SHARES.

(m) It is assumed that the sons are otherwise sufficiently provided for. They take shares in the residue.

Variation where daughters are put to their ELECTION *to settle shares appointed absolutely to them.*

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1. *Appointment of executors and trustees—Form No.* 3, *p.* 670.

2. *Forms in Pt.* I *of the Statutory Will Forms to apply—Form No.* 5, *p.* 671.

3. *Appointment of funds settled by the Will of the mother of the testatrix to her daughters* (*n*)—*Form No.* 6, *p.* 671.

4. *Legacies and annuities—see Forms Nos.* 9—44, *pp.* 674–702.

5. *Directions that legacies and annuities are to be free from duties, &c.—Form No.* 45 *or* 45A, *pp.* 703–4.

6. *General devise and bequest on administration trusts—Form No.* 46, *p.* 704.

7. *Definition of Trust Fund and trusts thereof—Form No.* 49, *p.* 708.

(1) *Protected life interest to husband—Form No.* 53, *p.* 710.

Trust for children equally after death of husband, each child's share to be held in settlement.

(2) AFTER the death of my husband the capital and income of the Trust Fund shall be held IN TRUST for all or any my children or child who attain the age of twenty-one years or being female marry under that age, and if more than one in equal shares, but notwithstanding the trusts aforesaid I direct that each child's share shall be retained and held on such of the trusts hereinafter declared concerning the same as shall be subsisting or capable of taking effect at my death, and the gift thereof shall not fail by reason only of the death of a child in my lifetime:(*o*)

(*n*) If the testatrix has power to appoint by Will a life interest to her husband, it can be exercised here, see Form No. 7, p. 672. If the power authorises it, a protected life interest may be appointed to the husband. In this case adapt Form No. 53A, p. 711. If desired, the daughters can be put to their election to settle their appointed shares upon the trusts declared of their shares in the residuary estate in the following form:—Each daughter of mine who attains a vested interest under the foregoing appointment shall under the equitable doctrine of election be bound within such time as my Trustees may permit to settle at the cost of my estate and to the satisfaction of my Trustees her appointed share upon the trusts hereinafter declared concerning her share in my residuary estate and so as to form one fund therewith for all purposes, and my Trustees may at their absolute discretion decide any question as to the amount and manner in which in case of default compensation is to be made.

Doctrine of election.

Daughters put to their election to settle appointed shares.

(*o*) If the husband is to be given a power of appointment, use and adapt Form No. 55, p. 713, omitting sub-clause (3) of that Form, and add hotchpot clause, Form No. 56, p. 714.

(3) THE statutory power of advancement shall apply for the benefit of my children.

8. *Settlement of children's shares—Form No.* 60, *p.* 716, *substituting* "husband" *for* "*wife*" *and* "him" *for* "*her*" *at the commencement of the Form, and using the words* "child," &c., *which will be found in square brackets in the Form for use where all the children's shares are settled.*

9. *Power to determine trusts of a son's share on his attaining twenty-five—Form No.* 60A, *p.* 720.

10. *Investment clauses—Form No.* 74, *p.* 732.

10A. *Additional powers; adapt Form No.* 56, *Sett. Personal, p.* 159.

11. *Power of appropriation, &c.—Form No.* 78, *p.* 738.

12. *Wide indemnity to trustees—Form No.* 80, *p.* 739.

13. *Power for professional trustees to charge—Form No.* 81, *p.* 739.

14. *Power for husband to appoint new trustees—Form No.* 83, *p.* 740, *substituting* "husband" *for* "*wife*."

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. V.

WILL *of a* MARRIED MAN *giving an* ANNUITY *to his* WIFE, SETTLED LEGACIES *to* DAUGHTERS, *and* RESIDUE *to only* SON (*p*) *where the children are all of full age.*

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1. *Appointment of executors and trustees—Form No.* 3, *p.* 670.

2. *Part* I *of the Statutory Will Forms to apply—Form No.* 5, *p.* 671.

3. *Bequest to wife of* "*personal chattels,*" *and legacy in priority to other legacies—Form No.* 10, *p.* 675.

4. *Annuity to wife—Form No.* 36 (1), *p.* 695.

5. *Settled legacies to daughters—Form No.* 24, *p.* 684.

6. *Other legacies* (*if any*)—*see Forms Nos.* 9—44, *pp.* 674–702.

7. *Direction that legacies and annuities are to be free from duties—Form No.* 45 *or* 45A, *pp.* 703–4.

8. *Residuary devise and bequest to son absolutely charged with payment of funeral and testamentary expenses, duties, debts, legacies, and annuity—Form No.* 50, *p.* 709.(*q*)

(*p*) Where there are several sons and daughters, see Prec. VI, *infra.*

(*q*) If the son predeceases the testator, leaving issue, this Form will by virtue of the Wills Act, 1837, s. 33, make the residue part of the son's estate. If this is not intended, see next Precedent. The whole estate will vest in the executors; if there is any land an assent in writing will be required to give legal effect to the devise or bequest. The Will is not part of the title.

9. *If required for purposes of daughters' settled legacies, add investment clause—Form No.* 74, *p.* 732.

10. *Power for professional trustee to charge—Form No.* 81, *p.* 739.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

NO. VA.

The same as last Precedent except that if the residuary legatee (the son) dies in the testator's lifetime leaving issue, such issue are to take(r) *with a gift over to daughters in settlement by reference to their settled legacies.*

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1—7, *as in last Precedent.*

8. *General devise and bequest on administration trusts—Form No.* 46, *p.* 704.

Trusts of residue.

9. MY Trustees shall stand possessed of the residue of the said money and any part of my estate remaining unconverted (hereinafter, with the investments for the time being representing the same, called my Residuary Estate) upon the trusts following (that is to say):—

Trust for son absolutely if he survives the testator.

(1) IF my son John B., survives me, then IN TRUST for him absolutely:

If son dies in lifetime, then trust for his children (if any).

(2) IF my said son dies in my lifetime leaving issue living at my death, then IN TRUST for all or any the children or child of my said son who attain the age of twenty-one years or [being female] marry under that age, and if more than one in equal shares:

(3) THE statutory provisions for maintenance and advancement shall apply for the benefit of the children of my son:

If son has no children, then to daughters of testator in equal shares upon the same trusts as their legacies.

(4) IF my said son dies in my lifetime and if no child of my said son attains a vested interest under the foregoing trust, then my Residuary Estate (including any accumulations made during the minority of any child of my said son) shall (subject to any advancements made under the statutory power) be held IN TRUST for all my daughters in equal shares,(s) and the gifts thereof

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Trust for conversion required in case of class gifts.

(r) As in this case the class to take may be infants and undetermined at the testator's death, the estate should be vested in trustees on trust for sale by virtue of the "administration trusts." In all class gifts of a mixed residue there should be a trust for conversion.

Variations if daughters'

(s) If the daughters' shares in residue are not to be settled, then omit the latter part of sub-clause (4) after the words "shall be held," and shall not fail by reason only of the death of any of my daughters in my lifetime, but the share or shares of each of my daughters, as well original as accruing, shall be retained and held Upon the trusts and subject to the powers and provisions hereinbefore declared concerning the legacy hereinbefore bequeathed to her and so as to form one fund therewith for all purposes (including any hotchpot provisions), but with this variation,(*t*) (that is to say):

Provision for accruer.

If any daughter of mine shall not have any child who under the trust in default of appointment hereinbefore declared concerning her legacy attains a vested interest in such legacy, then, subject to the trusts and powers hereinbefore declared in favour of such daughter, her husband, and issue, the share, as well original as accruing or to accrue, in my Residuary Estate to which any child of such daughter might have attained a vested interest shall accrue in equal shares to my other daughters or daughter (not being daughters or a daughter the trusts of whose legacy have failed or determined otherwise than by the absolute payment or transfer of the legacy) and be held Upon the trusts and subject to the powers and provisions hereinbefore declared expressly or by reference concerning their original shares in my Residuary Estate respectively and so as to form one fund with each legacy respectively and so that the gift of an accruing share shall not fail by reason only of the death of a daughter in my lifetime.

10. *Investment clauses* (*u*)—*Form No.* 74, *p.* 732.

10A. *Additional powers; adapt Form No.* 56, *Sett. Personal*, *p.* 159.

11. *Power of appropriation, &c.—Form No.* 78, *p.* 738.

12. *Power for professional trustee to charge—Form No.* 81, *p.* 739.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

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shares not settled.

substitute—"IN TRUST for all or any my daughters or daughter living at my death who attain the age of twenty-one years or marry under that age, and if more than one in equal shares."

(*t*) Form No. 24A, p. 684, makes the daughters' legacies fall into residue if they have no issue who attain vested interests in their legacies.

Trust to invest, how far applicable.

(*u*) The investment clause will be required for the settled legacies even if the son takes the residue absolutely. If the son dies in the testator's lifetime, leaving infant children, a trust to invest will be required, though the daughters' shares may not be settled. Of course, if the son becomes absolutely entitled he can stop any sale or investment of the residue provided that the prior liabilities are discharged.

No. VI.

WILL *of a* MARRIED MAN *giving an* ANNUITY *to his* WIFE, LEGACIES *to his* YOUNGER CHILDREN, *and residue to his* ELDEST SON. *Where all the* CHILDREN *are* INFANTS,(*v*) *gift over to first son who attains full age.*

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1. *Appointment of executors and Trustees—Form No.* 3, *p.* 670.

2. *Appointment of guardians, if desired—Form No.* 4, *p.* 671.

3. *Part* I *of Statutory Will Forms to apply—Form No.* 5, *p.* 671.

4. *Bequest of " personal chattels," to wife and legacy in priority to other legacies—Form No.* 10, *p.* 675.

5. *Other legacies—see Forms Nos.* 9—44, *pp.* 674–702.

6. *Annuity to wife—Form No.* 36 (1), *p.* 695.

Bequest of a legacy to each younger son attaining twenty-one and to each daughter attaining that age or marrying.

Legacies of children dying before testator to go to their issue (if any).

7. I BEQUEATH to each of my children (other than my eldest son, John B.) who attains the age of twenty-one years, or [being a daughter] marries under that age, the sum of £5,000, free of duty, with interest thereon from my death until paid or appropriated at the rate of £5 per cent. per annum ; and if any child (other than my said eldest son) dies in my lifetime leaving issue, living at my death, then I bequeath the legacy to which any such child would have been entitled if he or she had survived me and attained a vested interest, to his or her children (if any) who attain the age of twenty-one years, or [being female] marry under that age, and if more than one, in equal shares, and so that every [person] female who marries while an infant may give a valid receipt for [his or] her legacy.

Legacies of infants to be retained and invested, and income applicable for maintenance.

8. IF at my death any child or other issue of mine presumptively entitled to a legacy or a share of a legacy under the aforesaid bequests shall be under the age of twenty-one years, and [being a female] shall be also unmarried, then and in every such case the presumptive legacy or share of such infant shall be retained and invested by my Trustees in any of the investments hereinafter authorised, and the statutory provisions as to maintenance and advancement shall apply.(*w*)

(*v*) *Cf.* last Precedent.

Destination of accumulations.

(*w*) Under T. Act, 1925, s. 31 (1), the infant becomes absolutely entitled to the accumulations in the following cases :—

Vested interest in income.

(1) If he attains twenty-one or marries, and his interest in the income during his minority, or until his marriage, is a vested interest.

Legacies which fail to vest to sink into residue.

9. If any of the legacies hereinbefore bequeathed shall fail to become absolutely vested in any person under the foregoing provisions, every such legacy and the unapplied accumulations thereof, and the investments representing the same, or such part thereof as shall not have been applied for the advancement of any infant presumptively entitled thereto as aforesaid, shall fall into and form part of my residuary estate.

10. *General devise and bequest on the statutory trusts for administration—Form No.* 46, *p.* 704.

11. *Definition of Trust Fund and trusts thereof—Form No.* 49, *p.* 708.

Trust for eldest son.

(1) If my son, John B., survives me, and attains the age of twenty-one years, then In trust for him absolutely:

But if he dies under age, then for his children attaining twenty-one, &c., and if no child, then for such son of testator as shall first attain twenty-one. (*x*)

(2) If the said John B. dies in my lifetime or survives me, and dies under the age of twenty-one years, then, and in any such case, my Trustees shall stand possessed of the Trust Fund, In trust for all or any the children or child of the said John B. who attain the age of twenty-one years or [being female] marry under that age, and if more than one in equal shares, and if there shall be no such child of my said son, then In trust for the son of mine (other than the said John B.) who survives me and first attains the age of twenty-one years:

(3) The statutory powers of maintenance and advancement shall apply.

12. *Investment clauses—Form No.* 74, *p.* 732.

12a. *Additional powers; adapt Form No.* 56, *Sett. Personal, p.* 159.

13. *Power of appropriation, &c.—Form No.* 78, *p.* 738.

14. *Power for professional trustees to charge—Form No.* 81, *p.* 739.

In witness, &c. (*Form No.* 85, *p.* 741).

Acquisition of certain interests in capital.

(2) If, on attaining twenty-one or marrying, he becomes entitled to the property from which the income arose, in fee simple, absolute or determinable, or absolutely or for an entailed interest.

This does not affect a settlement made on his behalf under the Infants' Settlement Act, 1855.

On his marriage, he can give a valid receipt for the accumulations.

In all other cases the accumulations go with the capital of the property from which they arose, and, in the case of settled land, as if they were capital money arising from the land.

The powers conferred by the section apply so far only as a contrary intention is not expressed in the instrument creating the trust, and have effect, subject to the terms of that instrument: T. Act, 1925, s. 69 (2).

(*x*) If desired, the trusts may be extended to the children of other sons who die under age, with an ultimate trust in favour of the testator's daughters and their issue.

No. VII.

WILL *of a* MARRIED MAN *appointing* SHARES *under his* MOTHER'S WILL *to* DAUGHTERS. BEQUEST *of* TESTATOR'S RESIDUARY ESTATE *upon Trusts for* WIFE *for life and then to issue.* SETTLEMENT *of* DAUGHTERS' SHARES *in* RESIDUE, *with directions for them to settle their* APPOINTED SHARES *or* FORFEIT *their* SHARES *in* RESIDUE.(*y*)

I, A. B., of, &c. (*Form No.* 1, *p.* 669). Commencement.

1. *Appointment of executors and Trustees—Form No.* 3, *p.* 670.

2. *Part* I *of Statutory Will Forms to apply—Form No.* 5, *p.* 671.

3. *Bequest of "personal chattels" to wife and legacy to her in priority to all other legacies—Form No.* 10, *p.* 675.

4. *Appointment of the whole fund, subject to the trusts of the Will of testator's mother in favour of testator's daughters—Form No.* 6, *p.* 671.

5. *General devise and bequest on administration trusts—Form No.* 46, *p.* 704.

6. *Definition of Trust Fund—Form No.* 49, *p.* 708. *Trusts for wife for life, with power to appoint to issue and gift over to them —Form No.* 51, *p.* 709.

7. The statutory power of advancement shall apply.

8. *Settlement of daughters' shares—Form No.* 60. *p.* 716.

Forfeiture clause and gift over.

9. (1) EACH daughter of mine who survives me and under the trusts hereinbefore by reference or otherwise contained, or under any appointment by my wife under the power hereinbefore conferred on her, takes any share or interest in the Trust Fund, shall within one year after my death, or within one year after she attains full age (whichever first happens), or within such further time as my Trustees shall permit and to the satisfaction of my Trustees, settle at the cost of my estate the share hereinbefore appointed to her in the residuary estate of my mother, Upon the trusts and subject to the powers and provisions hereinbefore declared concerning such daughter's share in the Trust Fund:

(2) IF any daughter of mine shall neglect or refuse to settle her share in the residuary estate of my mother in manner and

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(*y*) The shares appointed cannot, of course, be settled by the testator; this Precedent will be found useful where the settlement funds are large and the testator's estate is small.

For a clause putting daughters to their election, see Prec. IV, p. 753, note, *supra*. Election.

within the period aforesaid or within such further time as my Trustees shall permit, then in such case such daughter and her issue shall not take any shares, whether original or accruing or to accrue, in the Trust Fund under the trusts and powers of my Will, and such shares to which such daughter or her issue might have become entitled under the trusts or powers thereof shall go and be held Upon and subject to the trusts, powers and provisions upon and subject to which the same would have been held if such daughter had died in my lifetime without ever having been married:

(3) THE concurrence of my Trustees in any such settlement shall be conclusive evidence that their requirements have been complied with.

10. *Investment clauses—Form No.* 74, *p.* 732.

10A. *Additional powers; adapt Form No.* 56, *Sett. Personal, p.* 159.

11. *Power of appropriation—Form No.* 78, *p.* 738.

12. *Indemnity to executors and Trustees—Form No.* 80, *p.* 739.

13. *Power for professional trustees to charge—Form No.* 81, *p.* 739.

14. *Power for wife to appoint new trustees—Form No.* 83, *p.* 740.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

NO. VIII.

WILL *of a* WIDOWER *settling the* SHARES *of each of his* CHILDREN *and giving the* TRUSTEES *power to* MAKE OVER *absolutely the* SHARES *of* SONS *when they attain* TWENTY-FIVE.(z)

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1. *Appointment of executors and Trustees—Form No.* 3, *p.* 670, *and appointment of guardians if required—Form No.* 4 *p.* 671.

2. *Part I of Statutory Will Forms to apply—Form No.* 5, *p.* 671.

3. *Legacies* (*if any*)—*see Forms Nos.* 9—44, *pp.* 674–702.

4. *General devise and bequest on statutory administration trusts—Form No.* 46, *p.* 704.

5. *Definition of Trust Fund and trusts thereof—Form No.* 49, *p.* 708:

Trust for children equally,

IN TRUST for all or any my children or child who attain the age of twenty-one years, or [being female] marry under that age,

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Method of retaining control instead of postponing the vesting.

(z) This method of retaining the control of shares till a child attains twenty-five is effective, the mere postponement of vesting until twenty-five is useless, because a child who attains twenty-one can, if the vesting is merely postponed, raise money on his expectant share by taking out a policy against death before twenty-five, see notes to Form No. 61, p. 721. *Cf.* Form No. 60A, p. 720.

and, if more than one, in equal shares, but so that each child's share shall be retained and held on such of the trusts hereinafter declared concerning the same as shall be subsisting or capable of taking effect at my death, and the gift thereof shall not fail by reason only of the death of a child in my lifetime.

shares to be retained in settlement.

6. THE statutory power of advancement shall apply to the share of each child of mine for the benefit of that child.

7. *Settlement of all children's shares—Form No. 60, p. 716, omitting references to the testator's wife and using the variations for the case of children (as opposed to daughters only) which will be found in the Form.*

8. NOTWITHSTANDING the trusts hereinbefore declared, my Trustees, if they in their absolute discretion think fit, may at any time and from time to time after any son of mine shall have attained the age of twenty-five years, pay or transfer the whole or any part of the share of such son of mine or any property appropriated in or towards satisfaction of such share to him absolutely, and thereupon the trusts hereinbefore declared concerning the share of such son of mine or any part thereof (as the case may be) shall, to the extent of such payment or transfer, forthwith determine, and my Trustees may at the like discretion by deed revoke the trusts declared concerning any share which may thereafter accrue to any such son, and thereupon the same shall (subject to any prior interests) be held IN TRUST for him absolutely.

Power for Trustees to hand over a son's share when he attains twenty-five.

9. *Investment clauses—Form No.* 74, *p.* 732.

10. *Power of appropriation—Form No.* 78, *p.* 738.

10A. *Additional powers; adapt Form No.* 56, *Sett. Personal, p.* 159.

11. *Indemnity to executors and Trustees—Form No.* 80, *p.* 739.

12. *Power for professional trustee to charge—Form No.* 81, *p.* 739.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. IX.

WILL *of a* WIDOWER *where children's shares vest at the age of* TWENTY-FIVE, *and in the case of* DAUGHTERS *on* MARRIAGE.(*a*)

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

Commencement.

(*a*) The postponement of vesting until twenty-five is strongly condemned, see notes to Form No. 61, p. 721, as to the reasons why; the last Precedent effectually gives effect to the testator's wishes, while this Precedent, though frequently adopted, is useless.

1. *Appointment of executors and Trustees—Form No.* 3, *p.* 670, *and appointment of guardians (if required)—Form No.* 4, *p.* 671.

2. *Part* I *of Statutory Will Forms to apply—Form No.* 5, *p.* 671.

3. *Legacies (if any)—see Forms Nos.* 9—44, *pp.* 674–702.

4. *General devise and bequest on administration trusts—Form No.* 46, *p.* 704.

5. *Definition of Trust Fund—Form No.* 49, *p.* 708. *Trusts for children and issue of deceased children of testator all living at his death, shares vesting at twenty-five or marriage—Form No.* 61, *p.* 721.

6. *Investment clauses—Form No.* 74, *p.* 732.

6A. *Additional powers; adapt Form No.* 56, *Sett. Personal, p.* 159.

7. *Power of appropriation, &c.—Form No.* 78, *p.* 738.

8. *Indemnity to executors and Trustees—Form No.* 80, *p.* 739.

9. *Power for professional trustees to charge—Form No.* 81, *p.* 739.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. X.

WILL *of a* TRADER. DEVISE *and* BEQUEST *of* REAL *and* PERSONAL *estate to Trustees;* DIRECTIONS *to carry on* BUSINESS *until* YOUNGEST SON *of Testator attains* TWENTY-ONE, *and during the same period to pay* ANNUAL SUM *to Testator's* WIFE, *determinable on her* SECOND MARRIAGE. *When youngest* SON *attains twenty-one,* BUSINESS *to be offered for* SALE *to* SONS *in* SUCCESSION, *and* LEASE *of* BUSINESS PREMISES *to be made to purchaser.* ANNUAL SUM *to be paid to* WIFE, *and subject thereto* SURPLUS *to go to all the* CHILDREN *equally.*(b)

Commencement.

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

1. *Appointment of executors and Trustees—Form No.* 3, *p.* 670.

2. *Part* I *of Statutory Will Forms to apply—Form No.* 5, *p.* 671.

3. *Legacies (if any)—see Forms Nos.* 9—44, *pp.* 674–702.

Devise and bequest on administration trusts.

4. I DEVISE AND BEQUEATH all the real and personal estate not hereby or by any codicil otherwise specifically disposed of, and which I can dispose of by Will in any manner I think

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(b) See also the Forms under the heading "Provisions as to Interests in Businesses," Nos. 70–73, pp. 727–29; also *Re Lawes-Wittewronge* [1915], 1 Ch. 408; 84 L. J. Ch. 472.

proper either as beneficially entitled thereto or under any general power (except under a power in regard to which I am required to make express reference and except the statutory power to dispose of entailed property), unto my Trustees, UPON TRUST that my Trustees shall (subject to the provisions hereinafter contained relating to the business of —— now carried on by me at —— and the premises upon which the same is carried on) stand possessed of the same, Upon the administration trusts expressed in Form 8 of the Statutory Will Forms, 1925, and that form shall be incorporated in my Will and shall apply without variation.

Definition of trust fund.

5. MY Trustees shall stand possessed of the investments hereinbefore directed to be made or authorised to be retained (including my said business and any other part of my residuary estate remaining unconverted) and the investments for the time being representing the same (hereinafter called the Trust Fund) and the annual income thereof (including in such income the net profits of my said business), Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

Trust to carry on business until youngest son attains twenty-one.

6. MY Trustees shall continue to carry on my said business until the youngest for the time being of my four sons, namely (*names of four sons*), attains the age of twenty-one years, with liberty for my Trustees to use and employ in the said business such part of the Trust Fund as they may think fit, and with liberty for that purpose to resort to any accumulations of income or profits which may have arisen under the direction for accumulation hereinafter contained and with liberty also for my Trustees to employ all or any of my said sons or any other persons to be the managers of the said business, and also to employ such assistants and servants in the said business, and to pay and allow to such managers, assistants and servants such salaries and wages and generally to conduct and carry on the said business in such manner as my Trustees shall in their absolute discretion think fit without being liable to account for the exercise of such discretion.

Until youngest son attains twenty-one an annual sum to be paid to wife during widowhood for maintenance of

7. UNTIL the youngest for the time being of my said four sons attains the age of twenty-one years my Trustees shall, out of the income of the Trust Fund, in the first place pay to my wife, so long as she remains my widow, free of duty the annual sum of £——, she thereout maintaining and educating such of my children as shall for the time being be under the age of

infant children, and also annual sum to each child of age.

twenty-one years (but so that my Trustees shall not be concerned to see to the application of the said annuity), and in the next place pay free of duty to each child of mine, if and when he or she attains the age of twenty-one years, the annual sum of £——, and if my wife dies or marries again before the youngest of my said sons attains the age of twenty-one years or dies, then my Trustees shall (in addition to any annual sums payable as aforesaid to such of my children as shall have attained full age) pay and apply such annual sum as they may think fit for or towards the maintenance and education or benefit of such of my children as shall for the time being be under the age of twenty-one years, and shall accumulate the surplus of the said income in the way of compound interest by investing the same and the resulting income thereof in any of the investments hereinafter authorised, with power to vary investments.

Surplus income to be accumulated.

[Remuneration of Trustees.]

[7A. Every Trustee for the time being carrying on the said business shall be entitled to retain out of the net yearly profits thereof the sum of £—— in every year as a remuneration, and any two or more of my Trustees for the time being may carry on the said business without my other trustees or trustee.]

When youngest son attains twenty-one business to be offered for sale to such son as shall be manager; if no such son, or if he refuses, then to all the sons in order according to seniority; and if all the sons decline, then to be sold to any other person.

8. If and when the youngest for the time being of my said four sons attains the age of twenty-one years, my Trustees shall offer the said business for sale to any one of my sons who may then be manager of the said business, and if two or more of my sons shall be managers, then to each manager in succession according to seniority of age, and if such manager or all such managers shall refuse the offer, or if none of my sons shall then be the manager of the said business, my Trustees shall offer the said business for sale to my sons then living (other than any son or sons who may have previously refused as aforesaid) successively according to seniority, and if all my sons shall decline such offer my Trustees shall sell the said business to any person and in such manner as they may think fit.

Offer to be accepted within given time.

9. (1) Each of my sons to whom an offer of sale is made as aforesaid shall be allowed —— days within which he must either accept or decline such offer, and if he does not accept the same within such period, he shall be deemed to have declined it:

Price to be fixed by valuation.

(2) If any of my sons accept the said offer, the price to be paid for the said business shall be ascertained by the valuation of two independent persons, one to be named by my Trustees and the other by the purchaser, or in case of their disagreement,

by an umpire to be chosen by such two valuers before they proceed to business :

(3) If either party shall fail to name a valuer, or to notify it in writing to the other party within —— days after the day on which the offer shall be accepted, or if the valuer named by either party shall refuse or neglect to act, then the valuation shall be made by the valuer of the other party alone.

No purchaser to be bound to enquire whether offer has been made, &c.(c)

10. No purchaser under my Will shall be concerned to see or inquire whether the business has been duly offered for sale to my sons as hereby directed, nor whether any such offer shall have been accepted or declined, nor shall the title of such purchaser be afterwards impeached on the ground that the said business had not previously been duly offered for sale as aforesaid or that any such offer (if made) had not been duly declined.

Lease to be granted of business premises to purchaser of business.

11. (1) If any of my sons shall purchase the business as aforesaid, my Trustees shall grant to him a lease of the premises at which the business is carried on (namely) —— (*describing it*) and of all the plant and machinery in and about the same, for any term not exceeding —— years in possession from the granting of such lease, at a rent the amount whereof shall be determined by valuation in the same manner as is hereinbefore directed with regard to the purchase-money of the business :

(2) The said lease shall contain covenants by the lessee for keeping in repair the property, plant and machinery, for substituting plant and machinery of equal value in the place of any that may be removed by the lessee during the term and keeping the same in repair, and for delivering up the property, plant and machinery at the end of the term in as good repair and condition as at the commencement of such term, and such other covenants and conditions as are usual in leases of the like nature, with such variations as my Trustees shall in their absolute discretion think fit.

If son purchases, one-third of purchase-money to be paid down, and remaining

12. If any of my sons shall purchase the business as aforesaid he shall pay one-third at least of the purchase-money at the time of completing the purchase, but the remaining two-thirds or any less proportion of the purchase-money may remain a debt from him to my estate for any period not exceeding

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(c) This gives effect to the principle of L. P. Act, 1925, s. 25 (2), for a purchaser of a legal estate is not concerned with directions respecting the postponement of a sale.

Postponement of a sale.

two-thirds may remain on mortgage.

seven years from the time of completion, and shall be secured in the meantime, with interest thereon at the rate of £5 per cent. per annum, by a legal mortgage of the interest of the purchaser in the property purchased by or demised to him.

Investment of proceeds of sale of business.

13. ALL money arising from the sale of my said business shall be invested by Trustees in any of the investments hereinafter authorised, with power to vary investments, and shall form one fund with and be deemed to be part of the Trust Fund.

Trusts of residue after youngest child has attained twenty-one.

14. IF and when the youngest for the time being of my said four sons attains the age of twenty-one years, my Trustees shall stand possessed of the Trust Fund and the income thereof (including therein any rent received in respect of my business premises) Upon the trusts and subject to the powers and provisions following (that is to say) :—

Annuity to wife during widowhood.

(1) UPON TRUST in the first place to set aside such investments as shall be sufficient at the time of appropriation to produce the annual sum of £—— and to pay such annual sum to my wife during her widowhood, with power to resort to the capital of the appropriated fund whenever the income shall be insufficient, such annual sum to commence from the time when the youngest for the time being of my said four sons attains the age of twenty-one years and to be considered as accruing from day to day, but to be paid by equal half-yearly payments, the first half-yearly payment to be made at the end of six months after the day hereinbefore appointed for the commencement thereof :

Trusts for children and issue of deceased children living at testator's death.

(2) SUBJECT to the trust for appropriation hereinbefore declared, the Trust Fund (including after the death or re-marriage of my Wife (whichever first happens) the appropriated fund or so much thereof as shall not have been applied under the trusts aforesaid) shall be held IN TRUST in equal shares (*continue Form No.* 59A, *p.* 715, *statutory advancement clause*).

15. *Investment clauses—Form No.* 74, *p.* 732.

15A. *Additional powers; adapt Form No.* 56, *Sett. Personal, p.* 159.

16. *Power of appropriation, &c.—Form No.* 78, *p.* 738.

[17. *Power for Trustee personally interested to act, if required —Form No.* 79, *p.* 739.]

18. *Indemnity to executors and Trustees—Form No.* 80, *p.* 739.

19. *Power for professional trustee to charge—Form No.* 81, *p.* 739.

20. *Power to appoint new Trustees during widowhood—Form No.* 83, *p.* 740.

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. XI.

WILL *of* Real *and* Personal Estate, *including* Real Estate *in* Scotland, Australia *and* New Zealand,(*d*) Upon Trusts *for* Sale *and* Conversion.

I, A. B., of, &c., now domiciled in England (*Form No.* 1, *p.* 669).

1. *Appointment of executors and Trustees—Form No.* 3, *p.* 670.(*e*)

General devise of real estate in England, Scotland, Australia, or elsewhere, to Trustees, on trust for sale and conversion.

2. I devise and bequeath all the real and personal estate not hereby or by any codicil otherwise specifically disposed of in or arising in England, Scotland, Australia, New Zealand or elsewhere, of or to which I am now, or at my death shall, be seised, possessed, or entitled, or over which I now or at my death may have any general testamentary power of disposition (but not including the power to dispose of entailed property) unto my Trustees Upon trust (*continue as in Form No.* 47, *p.* 705).

3. *Trusts of proceeds of sale. Pay funeral and testamentary expenses, debts, &c.—Form No.* 48, *p.* 707.

4. *Definition of Trust Fund and trusts thereof—Form No.* 49, *p.* 708.

(1) *Income to wife for life—Form No.* 51a, *p.* 709.

(2) *Issue as wife appoints and in default for children—Form No.* 55, *p.* 713.

(3) *Hotchpot clause—Form No.* 56, *p.* 714.

Maintenance clause.

5. The provisions of section thirty-one of the Trustee Act, 1925, shall apply to my Will in like manner in all respects as if all property subject to the trusts hereof were in England.

6. *Advancement clause—Form No.* 57a, *p.* 715.

7. *Investment clauses—Form No.* 74, *p.* 732.

8. *Power to purchase land in or out of England—Form No.* 75, *p.* 735, *with parts in brackets.*

9. *Powers of Management and Trusts of net rents and profits—Form No.* 76, *p.* 737.

(*d*) The English Wills Act has been adopted in Australia and New Zealand and most of the other British colonies. In South Africa the Roman-Dutch law prevails.

Whenever practicable, separate Wills should be made under local expert advice dealing with the land and immoveable property in each separate country. The testator should make his Will of personal estate (other than chattels real) in accordance with the law obtaining in the country in which he is domiciled. Where colonial property is dealt with it may be expedient not to make use of the Statutory Will Forms, 1925.

(*e*) In some cases it is desirable to appoint separate trustees and executors, see next Precedent.

Power to delegate trusts, &c.(*f*)

10. In addition to the powers conferred by sub-section (2) of section twenty-three of the Trustee Act, 1925 (relating to the appointment of attorneys and agents for the purposes of property abroad) my Trustees may give such remuneration to attorneys and agents as they may think fit, and may advance to them any money out of my estate for any purpose connected with the management of the said property without being answerable for any loss arising thereby.

Power to arrange for division of business among Trustees.

11. My Trustees may make arrangements among themselves for the division between them of the business of the trust, and in particular may leave the management of my property in any country out of Great Britain to any one or more of their number who may be resident there, and the management of my property in Great Britain to any two or more of their number who may be resident there, and in such case the trustees with whom the management of part of my property shall be left as aforesaid, shall, so long as the arrangement remains in force, be competent by themselves to exercise the trust for sale and all the powers of management conferred by my Will in relation to that property, and for that purpose shall have power as attorney or attorneys to sign and execute in the name or names of my other trustee or trustees any deed, agreement or other instrument, and such property may, if required, be vested solely in their names.

As to construction and incorporation of statutory powers and indemnities.

12. This Will shall, so far as possible, be construed and have effect in like manner as if the general law (including the statute law) of England applied thereto in all respects, and so far as necessary, all English statutory powers, indemnities and provisions shall (in addition to any powers given by any local law or Legislature) be deemed to have been expressly inserted herein, and in particular, but without prejudice to the generality of the foregoing provision, all the provisions relating to the appointment and discharge of trustees contained in the Trustee Act, 1925, shall apply to this Will.

12a. *Additional powers; adapt Form No.* 56, *Sett. Personal*, *p.* 159.

13. *Powers to appropriate, &c.—Form No.* 78, p. 738.

14. *General wide indemnity—Form No.* 80, p. 739.

15. *Power for professional trustee to charge—Form No.* 81, *p.* 739.

Execution.

In witness, &c.(*g*) (*Form No.* 85, p. 741).

(*f*) As to powers of management in Scotland, see the Trusts (Scotland) Act, 1921; and as to domicile, *Re Craignish* [1892], 3 Ch. 180.

(*g*) The Will must, as regards immoveable property, be validly executed according to the laws of the different countries, and an expert opinion may be necessary on this point.

No. XII.

WILL *of* PROPERTY *in* ENGLAND *and in the* UNITED STATES *of* AMERICA.(*h*)

I, A. B., of, &c. (*Form No.* 1, *p.* 669).

Appointment of American executors.

1. I APPOINT C. D., of, &c., and E. F., of, &c. (hereinafter called my American Trustees), to be my American executors to administer my personal estate in the United States of America, meaning thereby all stocks and loans of corporations created in the United States and in the States thereof, and all loans of any of the States of the United States or of any municipality created by any such State, all policies of insurance, and all debts, money and personal property due or belonging to me at the time of my death, or which may become due or belong to my estate thereafter not collectible by my English executors by virtue of the grant of letters testamentary to them by any of the Courts of the United Kingdom.

Of English executors.

2. (1) I APPOINT G. H., of, &c., and I. K., of, &c. (hereinafter called my English Trustees), to be my English executors, to administer all my personal estate other than what is hereinbefore directed to be administered by my American executors and also my real estate in England :

Of special executors of settled land.

(2) I APPOINT the respective persons who, at my death, shall be the trustees for the purposes of the Settled Land Act, 1925, of any settlement under which I am tenant for life or statutory owner, to be my special executors in regard to the settled land vested in me at my death.

3. (*Add legacies and specific gifts, if required—see Forms, pp.* 674–704.)

Devise of property in America to American Trustees on trust to realise.

4. I DEVISE all the real estate (including chattels real) of every kind situated or arising in any part of the United States of America, belonging to me or over which I have any general testamentary power of disposition unto my American Trustees, UPON TRUST, without any more delay than is consistent with the realisation of reasonable prices, to sell and dispose of all the said real estate in any way or manner at public or private sale, with power to execute valid deeds of conveyance or lease thereof in fee simple or for any less estate or term, without any obligation on the part of the purchasers or lessees to see to or be responsible for the application of the purchase-money, fines or rent, and with

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(*h*) This Precedent may be readily adapted to property in any British colony.

power as regards any real estate agreed to be sold in my lifetime to perfect the title thereto and convey the same to the purchasers thereof.

American executors and Trustees to remit money to English executors and Trustees.

5. MY American Trustees shall remit to my English Trustees all money arising from the sale of my real estate in America, and from the collection and conversion of my personal estate in America, except so much thereof as may be required for payment of my debts in America (including death duties, if any) and the expenses of administering my estate in America,(*i*) and the receipt of my English Trustees for all money remitted to them as aforesaid shall be a sufficient discharge for the same.

Devise and bequest of real and personal estate in England to English Trustees in trust to sell and convert

6. (1) I DEVISE and bequeath all my real estate and chattels real in England or Wales, and all my personal estate (including any property in respect of which I may have any general testamentary power of appointment) other than what is hereinbefore directed to be administered by my American Trustees, unto my English Trustees. (*Trust for sale, &c., as in Form No.* 46, *p.* 704).

Trusts of money received by English Trustees.

7. MY English Trustees shall, out of all money arising from the sale and conversion of my real and personal estate hereinbefore devised and bequeathed to them, and out of my ready money and of all money remitted to them by my American Trustees as aforesaid, pay, &c. (*continue Form No.* 48, *p.* 704.) (*Trusts for investment, and remainder of Will, as in the ordinary case of property in England, but in the Forms substituting* "my English Trustees" *for* "my Trustees.")

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

Death duties in case of foreign property.

(*i*) As to death duties abroad, see *Re Brewster* [1908], 2 Ch. 365; 77 L. J. Ch. 605; *Re De Sommery* [1912], 2 Ch. 622; 82 L. J. Ch. 17. English executors are, to the extent of the assets in their hands, liable to pay estate duty on foreign personalty, though such personalty is expressly bequeathed to foreign executors: *Re Dowager Duchess of Manchester* [1912], 1 Ch. 540; 81 L. J. Ch. 329; *Re Scott* [1916], 2 Ch. 268; 85 L. J. Ch. 528. As to French Mutation Duty, see *Re Scott* [1915], 1 Ch. 592; 84 L. J. Ch. 366.

PART IV.

CODICILS (PERSONAL).

No. I.

CODICIL *appointing an* EXECUTOR AND TRUSTEE *of a* WILL *in place of a* DECEASED EXECUTOR AND TRUSTEE.(*a*)

Commencement.

I, A. B., of, &c., declare this to be a first [*or* second, &c.] Codicil which I make this —— day of ——, 19—, to my Will, which is dated the —— day of ——, 19—.

Appointment of substituted executor.

1. (1) I APPOINT X. Y., of, &c., to be an executor and trustee of my Will [and also a guardian of my infant children] in the place of C. D., who has died since the date of my Will, and to act jointly with the other executors and trustees named in my Will [and I bequeath to him free of duty, if he accepts the office of trustee and executor, the sum of £——]:

(2) MY Will shall be read and have effect as if the name of the said X. Y. had been inserted therein in the place of the said C. D. wherever his name occurs and as if the said X. Y. had been originally appointed an executor and trustee of my Will [and a guardian of my infant children] in the place of the said C. D.:

Special executors of settled land.

(3) I APPOINT the respective persons who at my death shall be the trustees for the purposes of the Settled Land Act, 1925, of any settlement under which I am tenant for life or statutory owner to be my special executors in regard to the settled land vested in me at my death and affected by such settlement.

Gifts to take effect free from incumbrances.

2. NOTWITHSTANDING section thirty-five of the Administration of Estates Act, 1925, gifts of property (not being real estate or chattels real) contained in my Will shall take effect free from incumbrances (if any) affecting the same at my death which

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(*a*) For a Precedent appointing a substituted S. L. Act trustee, see Codicils (Real), *infra*. It will generally be expedient to have not less than two nor more than four executors. Unless a trust corporation is appointed, at least two trustees will be required to give receipts if there is a trust for sale of land. Representation will not be granted to more than four persons: Jud. Act, 1925, s. 160; if there is a minority or a life interest the court has power where there is only one executor to appoint an additional personal representative: *ib.*, s. 160 (2).

Number of executors.

Not more than four trustees for sale of land can be appointed after 1925: T. Act, 1925, s. 34 (2).

shall be discharged primarily out of my residuary personal estate in exoneration of such property.

Statutory Will Forms.

3. PART I of the Statutory Will Forms, 1925, shall, so far as applicable, be incorporated in my Will.

4. SUBJECT as aforesaid, I confirm my Will [except so far as it is revoked or varied by my first [*and* second, &c.] codicil[s], and I confirm that [and my other] codicil[s]].

IN WITNESS whereof I have hereunto set my hand the day and year first above written.

Signed by the above-named A. B. as a first [*or* second, &c.] codicil to his last Will in the presence of us both present at the same time, who in his presence and the presence of each other have hereunto set our names as witnesses.	(*Signature of Testator.*)

(*Two witnesses, adding addresses and descriptions.*)

No. II.

CODICIL *revoking the appointment of an* EXECUTOR *or* TRUSTEE *of a* WILL *and appointing a* NEW ONE *in his place.*

Commencement.

I, A. B., of, &c. (*Form No.* 2, *p.* 670).

Revocation of appointment of an executor.

1. I REVOKE the appointment contained in my Will whereby I appointed C. D. to be an executor and trustee thereof [and a guardian of my infant children] and also the legacy of £—— thereby bequeathed to him,(*b*) and declare that my Will shall take effect as if he were dead.

Appointment of new trustee and executor.

2. I APPOINT X. Y., of, &c., to be an executor and trustee of my Will [and also a guardian of my infant children] in the place of the said C. D., and to act jointly with the other executors and trustees named in my Will [and I bequeath to him free of duty, if he accepts the office of trustee and executor, the sum of £——].

3. MY Will shall be read, &c. (*as in the last Precedent to the end*).

IN WITNESS, &c. (*Form No.* 85, p. 741).

Need for revocation of executor's legacy.

(*b*) The codicil should expressly revoke any interests which the executor takes under the Will, or state that he is to take them notwithstanding the revocation of his appointment as executor, according to the wishes of the testator; see *Re Freeman* [1910], 1 Ch. 681; 79 L. J. Ch. 678.

No. III.

CODICIL *appointing an* ADDITIONAL EXECUTOR *and* TRUSTEE *of a* WILL.(c)

Commencement.

I, A. B., of, &c. (*Form No.* 2, *p.* 670).

Appointment of additional trustee and executor.

1. (1) I APPOINT X. Y., of, &c., to be an additional executor and trustee of my Will [and an additional guardian of my infant children], and to act jointly with C. D. and E. F., whom I thereby appointed to be the executors and trustees thereof:

(2) MY Will shall be read and have effect as if the name of the said X. Y. were inserted therein in addition to the names of the said C. D. and E. F. wherever their names occur and as if the said X. Y. had been originally appointed an executor and trustee of my Will [and a guardian of my infant children] in addition to the said C. D. and E. F.

2. *For further suggestions, see Prec.* I, *p.* 771, *supra.*

3. SUBJECT as aforesaid, &c. (*Form No.* 84, *p.* 741).

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. IV.

CODICIL *revoking, increasing, and giving additional* LEGACIES *and* ANNUITIES.(d)

Commencement.

I, A. B., of, &c. (*Form No.* 2, *p.* 670).

Revocation of legacy or annuity.

1. I REVOKE the legacy [annuity] of £—— bequeathed by my Will to ——.

Gift of substituted legacy or annuity.

2. I DIRECT that my Will shall be read and have effect as if a legacy [annuity] of £—— had been thereby bequeathed to —— in lieu of the legacy [annuity] of £—— thereby bequeathed to him [her] free of duty.

Gift of additional legacies and annuities.

3. I BEQUEATH the following legacies and annuities in addition to the legacies and annuities bequeathed by my Will, and

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(c) See note to Prec. I, *supra.*

When new Wills should be made.

Recitals to be avoided.

(d) It is not desirable to carry out complicated arrangements or variations of a Will by codicil. It is better to make a new Will. As to whether conditions in a Will apply to a substituted legacy in a codicil, see *Re Joseph* [1908], 2 Ch. 507; 77 L. J. Ch. 832. *Cf. Re Backhouse* [1916], 1 Ch. 65; 85 L. J. Ch. 146. As a rule recitals should be avoided, both in Wills and Codicils. As to revocation by codicil, see *Re Churchill* [1917], 1 Ch. 206; 86 L. J. Ch. 209; *Re Wilkins* [1920], 2 Ch. 63; 89 L. J. Ch. 507; *Re Stoodley* [1916], 1 Ch. 242; 85 L. J. Ch. 226; *Re Bernard* [1916], 1 Ch. 552; 85 L. J. Ch. 414.

direct that the same shall be paid and enjoyed free of death duties (that is to say) :—

4. (*See legacies and annuities in the Forms Nos.* 9—44, *pp.* 674–702. *For further suggestions, see Prec.* I, *p.* 771, *supra.*)

5. SUBJECT as aforesaid, &c. (*Form No.* 84, *p.* 741).

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. V.

CODICIL *directing that a* SUM *paid to one of the Testator's* CHILDREN *in his lifetime shall be taken in part* SATISFACTION *of his* SHARE *under* WILL.

Commencement.

I, A. B., of, &c. (*Form No.* 2, *p.* 670).

Declaration that money so paid shall be taken in part satisfaction of son's share.

1. SINCE the execution of my Will I have paid the sum of £—— to or for the benefit of my son, G. B. Now I declare that the said sum of £——, so paid to or for the benefit of my said son, shall be taken by him in part satisfaction of his share in the Trust Fund under my Will, and accordingly that such Trust Fund shall be divided between the children [*or* issue] among whom the same is directed to be divided by my Will, in such manner that the share of the said G. B. shall be less in amount than the shares of the other children [*or* issue] by the sum of £——.

2. SUBJECT as aforesaid, &c. (*Form No.* 84, *p.* 741. *For further suggestions, see Prec.* I, *p.* 771, *supra*).

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

No. VI.

CODICIL *settling the shares of* DAUGHTERS *so as to make their interests cease on becoming* RELIGIOUS SISTERS.

I, A. B., of, &c. (*Form No.* 2, *p.* 670).

1. I AM apprehensive that one or more of my daughters may be induced to enter into a religious sisterhood, and I desire to make the following alterations in my Will respecting the shares of my daughters in the Trust Fund as thereby defined :

Shares of daughters to be held in trust to pay income to daughter until she marries or becomes a sister.

(1) MY Trustees shall stand possessed of the share or shares, as well original as accruing, of each of my daughters who attains the age of twenty-one years and shall not previously have married, UPON TRUST to pay the annual income thereof to such daughter during her life or until she shall marry or become a

sister in any religious sisterhood (whichever first happens), and if such daughter shall marry, then IN TRUST for her absolutely and so that her receipt therefor, notwithstanding infancy, shall be a valid discharge :

On marriage to be hers absolutely.

(2) BUT if a daughter shall become a sister in any religious sisterhood, then my Trustees may, at their discretion, out of the annual income of her share or shares make such allowance (if any) for her maintenance and benefit during her life as they shall think fit, and without being liable to account for the exercise of such discretion, and subject thereto shall hold the said share or shares, as well original as accruing and the annual income thereof IN TRUST for my other children or child (other than a daughter who has joined a sisterhood) who attain the age of twenty-one years, or being female marry under that age, and, if more than one, in equal shares :

If she becomes a sister, share to go over, except as to allowance for maintenance.

(3) IF such daughter shall die without ever having been married or having become a sister as aforesaid, then [IN TRUST for such person or persons, and in such manner as she shall by Will or codicil appoint, and in default of and subject to such appointment,] IN TRUST for my other children or child (other than, &c.) (*as before*) :

(4) EVERY share accruing to a daughter of mine under this Codicil shall be subject to the like trusts as are hereinbefore declared concerning her original share :

(5) The word "sisterhood" in this Codicil relates to Roman Catholic as well as Protestant institutions or associations, but any daughter of mine becoming an associate of any such institution shall not be considered as becoming a sister, unless the becoming an associate involves the surrender or an undertaking to surrender any part of her property.

Meaning of "sisterhood."

SUBJECT as aforesaid, &c. (*Form No.* 84, *p.* 741. *For further suggestions see Prec.* I, *p.* 771, *supra*).

IN WITNESS, &c. (*Form No.* 85, *p.* 741).

DIVISION VI.

WILLS (REAL).

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SECTION I.

COMMENCEMENT OF WILLS AND CODICILS.

No. 1.

Commencement of Will.

I, ——, of ——, hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last Will, which I make this —— day of ——, 19—, [and which for the purpose of convenience I have divided into —— parts(a)].

No. 2.

Commencement of codicil.(b)

I, ——, of ——, declare this to be a first [*or* second, &c.] codicil, which I make this —— day of ——, 19—, to my Will, which is dated the —— day of ——, 19—.

Intended marriage.

(a) Where a Will is long, it is sometimes convenient to divide it into parts. If the Will is made before the marriage add after the date:—" in contemplation of my intended marriage with ——, and I declare that this Will shall not take effect unless the said marriage is solemnised within six months from the date hereof." As to this, see L. P. Act, 1925, s. 177. If the Will is to take effect in any event say " shall, if I die before the said marriage is solemnised, take effect as if the said —— had died in my lifetime."

(b) Form No. 47 should be used at the end of all codicils.

SECTION II.

APPOINTMENT OF EXECUTORS AND TRUSTEES, CONFIRMATION OF MARRIAGE SETTLEMENT, AND BEQUEST OF RENTS IN ARREAR, &c.(c)

No. 3.

Appointment of Executors and Trustees for purposes of S. L. Act.

(1) I APPOINT ——, of, &c., ——, of, &c., and ——, of, &c. (hereinafter called my Trustees), to be the executors of my Will, and to be the trustees hereof (*d*) for all the purposes of the Settled Land Act, 1925:

(2) I APPOINT the respective persons who at my death shall be the trustees for the purposes of the Settled Land Act, 1925,

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(*c*) For Forms of legacies, see Forms in Wills (Personal), p. 674, *et seq.*

Appointment of Trustees of compound settlements.

(*d*) The trustees become the trustees for the purposes of the S. L. Act of a compound settlement made by the Will and any subsequent instrument: S. L. Act, 1925, s. 31. Under the old law this could have been done by an express appointment to that effect in the prior instrument only: *Re Spencer's S. E.* [1903], 1 Ch. 75; 72 L. J. Ch. 59. This section has been amended by the L. P. (Amend.) Act, 1926, Sch.; by virtue of that amendment, if there are no trustees of the prior instrument, but there are S. L. A. trustees of the instrument under which there is a tenant for life or statutory owner, then, until new trustees are appointed of the prior instrument or of the compound settlement, the trustees of the later instrument will be trustees of the compound settlement and can be named as such in the Vesting Assent made for giving legal effect to the settlement. Where three documents, A, B and C, constitute the settlement, if there are no S. L. Act trustees of A, but there are trustees of B, then such trustees become the S. L. Act trustees of B and C, and accordingly (document C creates the life interest) become trustees of A, B and C.

Probate material to the legal estate.

The probate is material as respects any legal estate in land, for it is evidence that the legal estate has under Ad. of E. Act, 1925, Pt. I, become vested in the executors. It will remain in them till a Vesting Assent is executed. The Will itself only operates as a "trust instrument" and governs the equitable interests which are not generally material to a purchaser: S. L. Act, 1925, ss. 6, 9, 110.

Management of land during a minority or pending a contingency.

The mere appointment of S. L. Act trustees operates to constitute them trustees for the purposes of S. L. Act, 1925, s. 102, which confers the requisite powers of management during a minority or pending a contingency, and takes the place of Conv. Act, 1881, s. 42, in regard to settlements whenever made, though in regard to a person entitled contingently it only applies where he becomes so entitled under an instrument coming into operation after 1925.

Devolution of trusts and powers.

As to the devolution of trusts and powers: T. Act, 1925, ss. 18, 36 (7), 43; S. L. Act, 1925, s. 34 (2). It is sufficient to refer to "my trustees" throughout without any further definition.

Legacies, guardians, &c., position of, in Wills (real).

For legacies to executors and trustees, see Wills (Personal), Form No. 3, p. 670, *supra*. It is often convenient in Wills settling real estate to deal first with the freeholds, leaseholds, heirlooms and other matters relating to the settlement and to place the legacies immediately before the gift of the residuary personalty. For appointment of guardians, see Wills (Personal), Form No. 4, p. 671, *supra*.

"Will" includes "codicil."

In a Will references to "my Will" are generally construed as including codicils, for a codicil forms part of a Will: *Re Smith* [1916], 2 Ch. 368; 85 L. J. Ch. 657.

of any settlement under which I am tenant for life or statutory owner (if willing to act) to be my special executors in regard to the settled land vested in me at my death pursuant to that settlement.(*e*)

No. 3A.

Forms in Pt. I of Statutory Will Forms to apply.

ALL the forms contained in Part I of the Statutory Will Forms, 1925 (being forms which relate to (1) Confirmation of settlements, (2) The meaning of "personal chattels," (3) Inventories and provisions respecting chattels, (4) Receipts for legacies given to charities, (5) Directions respecting annuities and (6) Powers of appropriation) are incorporated in my Will and shall have effect so far as applicable.

No. 3B.

Confirmation of testator's marriage Settlement.(*f*)

[I CONFIRM any Settlement made in contemplation of my marriage with my wife and declare that [subject as hereinafter expressly mentioned (*g*)] the provisions hereby made for her and my children [issue] shall be in addition to and not in satisfaction of those made or covenanted to be made for them by settlement.]

[No. 4.

Bequest of rents in arrear and accruing.(*h*)]

I BEQUEATH free of legacy duty to the [each] person of full age who at my death shall become beneficially entitled to the possession or to the receipt of the rents and the profits of the real estate [and chattels real] [at ——] hereinafter devised [or bequeathed] in settlement, all arrears of rents and profits due to me at my death, and all shares and proportions of rents and profits not actually due though accruing due at my death and payable to my estate after my death from the same property, but subject to payment of all [rents] rates, taxes, costs of insurance and repairs, and other outgoings (including estate duty payable in respect thereof) properly chargeable in account against the same and not discharged in my lifetime in exoneration of my residuary estate. [I also bequeath to the same person all my farming live and dead stock and effects [mining plant and effects] free of duty.]

Also of farming live and dead stock, and mining plant.

Special executors.

(*e*) See Ad. of E. Act, 1925, s. 22; such an appointment will be implied where necessary: *ib.*, but it avoids mistakes if an express appointment is made. If the special executors renounce then the grant can be made to the general executors.

"Satisfaction."

(*f*) This clause is only required if Form 3A is not used; it prevents any questions arising under the doctrine of satisfaction, see Theobald, 7th ed., 759, *et seq.*

(*g*) *E.g.*, if the testator gives legacies to children and directs them to bring into hotchpot advances made during his lifetime, see Wills (Personal), Form No. 64, p. 724, *supra*.

Apportionment between devisee and executor.

(*h*) As a general rule it is not convenient that the accruing rents of devised land should be apportioned as from the testator's death between devisee and executor. As to the effect of such a clause, see *Re D. of Cleveland* [1894], 1 Ch. 164; 63 L. J. Ch. 115; *Re Ford* [1911], 1 Ch. 455; 80 L. J. Ch. 355; Theobald, 7th ed., 216.

SECTION III.

DEVISE AND LIMITATIONS OF LAND BY WAY OF SETTLEMENT.

No. 5.

General devise of land of every tenure in Settlement.

I GIVE all the real estate and chattels real not hereby or by any codicil hereto otherwise disposed of and which I can at my death dispose of by Will in any manner I think proper for any estate or interest either by virtue of my beneficial ownership or under any general power [including the statutory power to dispose of entailed property] (except under [the statutory power to dispose of entailed property and except under] a power to which I am bound expressly to refer) To the persons who under the trusts hereinafter declared become entitled on or after my death to have vesting instruments made in their favour, Upon the trusts and subject to the powers and provisions hereinafter declared, and so that every interest for life shall be without impeachment of waste [and where limited to a female (*i*) shall be without power of anticipation during any coverture], yet so that every tenant for life shall (save so

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(*i*) See M. W. P. Act, 1907, s. 3. It is no longer necessary to limit life estates, given to females, for their separate use.

Form and effect of devise.

A devise does not pass any legal estate. It is convenient to express a devise to be in favour of persons entitled to have the legal estate vested in them; for an alternative, see Wills Personal, Form No. 3 (4), p. 671.

Where tenants for life are not to be impeachable for waste, but the provision is to be limited, the following may be substituted:—

Limited exemption from waste; restraint on anticipation.

AND so that every interest for life shall be without impeachment of waste, except waste in pulling down buildings and not restoring the same, or erecting equivalent buildings instead thereof, or in cutting ornamental timber save for the purpose of improving the growth of the timber left [and every interest for life limited to a female shall be without power of anticipation during any coverture].

Capital money.

As to equitable waste: L. P. Act, 1925, s. 135; as to the statutory power to insure and the application of insurance money: T. Act, 1925, ss. 19, 20. See also S. L. Act, 1925, s. 78 (as amended by L. P. (Amend.) Act, 1926, Sched.) as to the devolution of money directed to be held as capital money arising under that Act.

Alternative method to a strict settlement.

If preferred the property intended to be settled can be devised and bequeathed to trustees on trust for sale and to stand possessed of the net proceeds and of the rents and profits until sale on trusts similar to those required for the purposes of a strict settlement; this eliminates the need for a vesting instrument on each change of ownership, but though the trustees have power (L. P. Act, 1925, s. 29) to delegate certain powers of management to the person entitled to the income, still a settlement on these lines imposes on them more work, at any rate in the case of large estates, than they may be prepared to undertake. This can be met by extending the powers to delegate, see Settlements Personal, Form No. 56 (4), p. 160.

far as this obligation may be imposed on a lessee) be liable to insure buildings [except farm buildings] against fire to an amount equal to three-fourths of the sum required to rebuild the same in case of total destruction and to apply the insurance money in rebuilding or otherwise as capital money arising under the Settled Land Act, 1925, from the property insured (that is to say) :—

No. 6.

Rentcharge to wife.(*j*)

UPON TRUST that my wife, if living at my death, shall receive out of the premises (except advowsons) during [her widowhood] the residue of her life the yearly rentcharge of £——, to commence from my death, and to be considered as accruing from day to day, but to be paid without any deductions (except for income tax) by equal half-yearly payments, the first payment thereof to be made at the end of six months from my death if my wife shall then be living : And subject to the said rentcharge.

No. 6A.

Rentcharges to persons named in a Schedule.

UPON TRUST that the several persons named in the —— Schedule to my Will, if respectively living at my death, shall receive out of the premises (except advowsons) during their respective lives or for any less periods mentioned in that Schedule the respective yearly rentcharges set opposite their respective names in that Schedule, each rentcharge to commence from my death [unless otherwise stated in the said Schedule] and to be considered as accruing from day to day, but to be paid without any deduction (except for income tax) by equal half-yearly [quarterly] payments, the first payment to be made at the end of six [three] months from my death [or from the date fixed for the commencement of the rentcharge] if the rent-chargee shall then be living And subject to the said rent-charges.(*k*)

No. 7.

Life interest to wife.

UPON TRUST for my wife during her [widowhood] life [without power of anticipation during any coverture (*l*)], with remainder.

Powers and remedies for recovering rentcharges.

(*j*) For the powers and remedies annexed to the jointure : L. P. Act, 1925, s. 121 ; the rentcharge being for life can only take effect as an equitable interest ; the jointress can under that section create an equitable term of years for raising arrears ; legal effect must be given to any mortgage made by the term trustees under S. L. Act, 1925, s. 16, by the estate owners ; usually it will be more convenient for the tenant for life to raise the money required under *ib.*, s. 71.

Annuities.

(*k*) This is the most convenient mode of providing for annuities when the residuary personal estate is made to devolve with the land.

Statutory powers of tenant for life.

(*l*) These words will not be required if the interest is limited during widowhood only, nor if Form No. 5, *supra*, is used in its entirety. It is more usual to give the widow a rentcharge and give the eldest son the first life interest. An interest during widowhood gives the statutory powers of a tenant for life :

No. 8.

Limitation of residence to wife during widowhood or until she becomes entitled to a settled estate with a rent-charge issuing out of all the testator's real estate, with remainders over.

(1) As to my capital message, known as ——, in the County of ——, and the stables, gardens, pleasure-grounds and park, usually enjoyed therewith :—

Upon trust for my wife (if living at my death and if she shall not then be entitled to the possession or receipt of the rents and profits of the —— Estate situated in the County of ——, and settled by a Deed dated the —— day of ——), until she re-marries or becomes entitled as aforesaid or dies (whichever first happens) :

(2) And as to all other the property hereinbefore devised or bequeathed :—

Upon trust that if my wife shall be living at my death and shall not then be entitled as aforesaid, she may, as from my death and until she marries again or becomes entitled as aforesaid or dies (whichever event first happens), receive out of the same property (except advowsons) the yearly rentcharge of £—— [in addition to the said yearly rent-charge of £—— under my marriage Settlement], the rentcharge hereby limited to be considered as accruing from day to day, but to be paid without any deduction (except for income tax) by equal half-yearly payments, the first half-yearly payment to be made at the end of six months next after my death, if my wife be then living, and has not married again, or become entitled as aforesaid :

(3) And as to all the property devised or bequeathed, subject as aforesaid :—

(i) Upon trust for, &c.

No. 9.

Limitation of a term.(m)

Upon trust for my Trustees for a term of —— years from my death without impeachment of waste, Upon the trusts hereinafter declared concerning the same : And subject thereto.

No. 10.

Trust creating inalienable life interest.(n)

(1) Upon trust for my Trustees during the life of my son —— without impeachment of waste, Upon the trusts following (that is to say) :—

S. L. Act, 1925, s. 20 (1) (vi); even where given subject to maintaining children: *Re Pollock* [1906], 1 Ch. 146; 75 L. J. Ch. 120.

(*m*) If the term is to secure portions for the sisters and younger brothers of the eldest son, it will come immediately before his life interest.

Objects of limiting terms.

A term should generally be limited for raising capital sums, for discharging incumbrances, for the upkeep of policies, or for providing an indemnity. A term is no longer required in the case of a rentcharge. For the power for personal representatives to create rentcharges and limit terms : Ad. of E. Act, 1925, s. 40.

(*n*) For the statutory forms of "protective trusts" : T. Act, 1925, s. 33. In the case of a strict settlement it will generally be expedient to set out the trusts and not to rely on that section, for many variations would be required.

(i) [(*o*) In case at my death no act has been done or suffered and no event has happened whereby the trust next hereinafter contained in favour of my said son if subsisting would cease to have effect, then UPON TRUST that my Trustees shall permit my said son to receive the income of the said property and be in the position and have the powers of a tenant for life thereof without impeachment of waste (with a right to require a vesting instrument to be made in his favour) until he shall do or attempt to do or suffer any act or thing, or until any event shall happen by or in consequence of which he would cease to be entitled to receive such income or any part thereof if the same were given to him absolutely during his whole life, in any of which cases as well as on his death the aforesaid trust in favour of my said son is to cease;

Trustees to have statutory powers when discretionary trust arises.

(ii) And after the cesser of the said trust in the lifetime of my said son UPON TRUST that my Trustees shall enter into, and during the residue of his life continue in possession or receipt of the rents and profits of the said property, and may, as statutory owners, require a vesting instrument to be made in their favour, and, in addition to the powers conferred on them as statutory owners, may exercise the powers of management conferred by section one hundred and two of the Settled Land Act, 1925, and any additional powers conferred by my Will, and shall pay the net income of the said property, after payment of all rates, taxes and other outgoings, and expenses incurred in the exercise of the aforesaid powers and in the opinion of my Trustees properly payable out of income to or for the maintenance and support or otherwise for the benefit of all or any one or more exclusively of the other or others of my said son and his wife and issue (if any) and my other issue for the time being in existence as my Trustees in their absolute discretion, and without being liable to account for the exercise of such discretion may think fit;(*p*)

Gift over on bankruptcy; effect on S. L. Act powers.

(*o*) If the son is bankrupt the first part of this trust will be omitted. The gift over is not void under S. L. Act, 1925, s. 106: *Re Levy* (1885), 30 Ch. D. 119; 54 L. J. Ch. 968; and thereafter he no longer has the powers of a tenant for life: *ib.*, s. 20 (1) (vi) (viii); but the powers become exercisable by the trustees as statutory owners: *ib.*, s. 23. Until a vesting instrument is made in favour of the trustees a purchaser without notice can deal with the former tenant for life: *ib.*, s. 110.

Effect of discretionary trust "no tenant for life."

(*p*) Under this last trust there is no tenant for life within the meaning of S. L. Act, 1925: *Re Atkinson* (1886), 31 Ch. D. 577; 55 L. J. Ch. 49; and see *Re Horne's S. E.* (1888), 39 Ch. D. at p. 89; 57 L. J. Ch. 790; this brings

(iii) Notwithstanding the trusts aforesaid, the said property shall be deemed to be held upon such trusts as may be requisite for constituting my said son the protector of the settlement created by my Will during his life :

Protectorship.

(2) And after the death of my said son, UPON TRUST, &c. (*limitations as required*).

No. 11.

Limitations in strict settlement where the testator has sons living but no grandchildren, and where females are not to take.

UPON TRUST for my first and every other son successively according to seniority during his life,(q) With remainder immediately after the interest for life of each such son, UPON TRUST for his first and other sons successively according to seniority in tail male, With remainder UPON TRUST for my brother —— during his life, With remainder UPON TRUST for his first and other sons successively according to seniority in tail male, With remainder (r) (*ultimate limitation—Form No.* 19, p. 792).

No. 12.

Limitations in strict settlement where no issue living, sons' granddaughters and daughters being preferred to testator's daughters.

(1) UPON TRUST for my first and every other son successively according to seniority during his life, With remainder immediately after the interest for life of each such son UPON TRUST for his first and other sons successively according to seniority in tail male, With remainder UPON TRUST that all the grandsons of mine to whom interests in tail male are hereinbefore limited may successively take interests in tail general in the same order in which they take interests in tail male, With remainder :

(2) UPON TRUST for the first and other daughters successively according to seniority in tail male of each of my sons, and so that all the daughters of an elder son of mine shall always take before the daughters of a younger son of mine, With remainder UPON TRUST that all my granddaughters to whom interests in tail male are hereinbefore limited may successively take interests in tail general in the same order in which such granddaughters take interests in tail male, With remainder :

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s. 23 into play, for in default of a tenant for life there will always be a statutory owner to exercise the statutory powers.

Accumulation of surplus income.

If desired, a power to accumulate surplus income during the subsistence of the last trust during a period not exceeding twenty-one years from the testator's death may be added : L. P. Act, 1925, s. 164.

Acceleration by disclaimer.

(q) Where a tenant for life with remainder to his sons in tail male disclaimed his life interest while he had no son living, the interest of the next tenant for life was held not to be accelerated : *Re Scott* [1911], 2 Ch. 374 ; 80 L. J. Ch. 750, but this decision has been questioned in *Re Brooke* [1923], 2 Ch. 265 ; 92 L. J. Ch. 504 ; and see article in 1917, 61 Sol J. 573.

(r) If desired, other limitations can be inserted here, *e.g.*, to the testator's other brothers for life with remainder to their issue in tail male, &c. It is assumed that life estates are without impeachment for waste under Form No. 5, *supra*

(3) UPON TRUST for my first and every other daughter successively according to seniority during her life, With remainder immediately after the interest for life of each daughter of mine UPON TRUST for her first and other sons successively according to seniority in tail general, With remainder :

(4) UPON TRUST for the first and other daughters successively according to seniority in tail general of each daughter of mine, and so that all the daughters of an elder daughter of mine shall always take before the daughters of a younger daughter of mine :

(5) WITH remainder (*ultimate limitation—Form No.* 19, *p.* 792).(*s*)

No. 13.

The same, where issue living.

(1) UPON TRUST for my eldest son —— during his life, With remainder UPON TRUST for his first and other sons successively according to seniority in tail male :

(2) WITH remainder UPON TRUST for my second son —— during his life, With remainder UPON TRUST for his first and other sons successively according to seniority in tail male :

[(3) WITH remainder—*similar limitations, if required, to third and other living sons and their sons in tail male*] :

(4) WITH remainder UPON TRUST for all my sons hereafter to be born successively according to seniority for their respective lives, With remainder immediately after the interest for life of each such after-born son of mine UPON TRUST for his first and other sons successively according to seniority in tail male :(*t*)

(5) WITH remainder UPON TRUST that all the grandsons of mine to whom interests in tail male are hereinbefore limited may successively take interests in tail general in the same order in which they take interests in tail male :

(6) WITH remainder UPON TRUST for the first and other daughters of my said eldest son ——, successively according to seniority in tail male :

(7) WITH remainder UPON TRUST for the first and other daughters of my said second son ——, successively according to seniority in tail male :

[(8) WITH remainder—*similar limitations to daughters in tail male of other living sons*] :

(9) WITH remainder UPON TRUST for the first and other daughters successively according to seniority in tail male of each

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(*s*) For exemption from waste and restraint on anticipation, see Form No. 5, *supra*.

(*t*) Where estates are settled so as to go along with a peerage and the testator has issue male living at the date of his Will, this Form will be used down to this point, and Form No. 18, *infra*, will be taken.

of my sons hereafter to be born, and so that all the daughters of an elder of such after-born sons shall always take before the daughters of a younger of such after-born sons:

(10) WITH remainder UPON TRUST that all my granddaughters to whom interests in tail male are hereinbefore limited may successively take interests in tail general in the same order in which such granddaughters take interests in tail male:

(11) WITH remainder UPON TRUST for my eldest daughter ——, the wife of ——, for her life, With remainder UPON TRUST for her first and other sons successively according to seniority in tail general:

[(12) WITH remainder—*similar limitations to the testator's second and other living daughters and their sons in tail general*:]

(13) WITH remainder UPON TRUST for all my daughters hereafter to be born successively according to seniority for their respective lives, With remainder, immediately after the interest for life of each such after-born daughter of mine, UPON TRUST for her first and other sons successively according to seniority in tail general:

(14) WITH remainder UPON TRUST for the first and other daughters of my said eldest daughter —— successively according to seniority in tail general:

[(15) WITH remainder—*similar limitations to daughters in tail general of other living daughters*:]

(16) WITH remainder UPON TRUST for the first and other daughters successively according to seniority in tail general of each of my daughters hereafter to be born, and so that all the daughters of an elder of such after-born daughters shall always take before the daughters of a younger of such after-born daughters:

(17) WITH remainder (*ultimate limitation—Form No.* 19, *p.* 792).

No. 14.

Variations in the preceding Form.

Daughters of sons as tenants in common in tail, with cross-remainders. (*u*)

(1) UPON TRUST (by virtue of the statutory provisions applicable to the case) for my Trustees on the statutory trusts for sale and otherwise requisite for giving effect to the following trusts, namely—

(i) Upon trust for all the daughters in equal shares of my said sons and of every son of mine hereafter to be born as tenants in common in tail and so that the daughters of an elder son shall always take together in equal shares before the daughters of a

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(*u*) The "statutory trusts" are set out in S. L. Act, 1925, s. 36 (6), as amended by L. P. (Amend.) Act, 1926, Sched. Under that section, where

"Statutory trusts."

younger son with cross-remainders in tail between the daughters (if more than one) of each son;

(ii) And if there shall be only one daughter of my son, then as to the entirety of the property, UPON TRUST for such one daughter in tail, and so that the daughter of an elder son shall always take before the daughter or daughters of a younger son;

Daughters of testator as tenants in common for life.

(iii) With remainder UPON TRUST for all my own daughters, namely ——, ——, and ——, and every daughter of mine hereafter to be born in equal shares as tenants in common for life;

Sons of daughters successively in tail.

Daughters of daughters as tenants in common in tail with cross-remainders. (v)

(iv) And as to the share of each daughter after her death, With remainder UPON TRUST for her first and other sons successively according to seniority in tail: With remainder UPON TRUST for all her daughters as tenants in common in tail with cross-remainders between them if more than one in tail, and if there shall be only one such daughter, then as to the entirety of the share of a daughter in the property, UPON TRUST for such one daughter in tail;

(v) And in case of the failure of issue of any daughter of mine with further cross-remainders, as to the share or shares of such daughter (as well original as accruing under this present limitation) UPON TRUST for the others of my daughters, if more than one, in equal shares as tenants in common for life with the like remainders in respect of the share of each daughter to her issue as are hereinbefore limited in respect of her original share;

(vi) And if all my daughters but one shall die without issue, then as to the entirety of the property, UPON TRUST for such one daughter of mine for life with the like remainders to her issue as are hereinbefore limited in case of an undivided share:

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after 1925 settled land comes to be held in undivided shares, a trust for sale is interposed. The trustees may require the personal representatives or other estate owners to vest the land in them and in the meantime it is held on the "statutory trusts." The trustees for sale have all the statutory powers of a tenant for life, including any additional powers conferred by the settlement: L. P. Act, 1925, s. 28, as amended by L. P. (Amend.) Act, 1926, Sched.; where (as in this case) the trust for sale takes effect by virtue of a statute, no question arises as to the approval of the trustees by the court to enable them to overreach family charges having priority to the trust for sale; the trustees have wider powers than if a trust for sale were created by a testator or settlor: *ib.* This Form gives the variations in the last preceding Form (and with slight alterations in Form No. 12, *supra*), where the testator's daughters and granddaughters take as tenants in common.

Trustees for sale "by virtue of a statute."

Variation of preceding Forms.

Implied cross-remainders in tail.

(*v*) For cases where under the old law cross-remainders in tail would have been implied, see Theobald, 7th ed., 739, *et seq.* After 1925 entailed interests can only be created by expressions which in a deed (not being an executory instrument) would have created an estate tail: L. P. Act, 1925. s. 130 (1).

(2) WITH remainder (*ultimate limitation—Form No.* 19, *p.* 792).

[(3) PROVIDED that if any one or more of my daughters or granddaughters shall die in my lifetime leaving issue living at my death the limitations hereinbefore contained shall nevertheless be construed and take effect in the same manner in all respects as if such daughters or granddaughters had actually survived me and died immediately after my death.(*w*)]

[Provision against death of member of a class in the testator's lifetime, leaving issue living at his death.]

No. 15.

Limitations in strict settlement, testator's daughters and their issue male being preferred to sons' daughters, and sons' daughters and their issue male to daughters' daughters.

(1) UPON TRUST for my eldest son —— and my second son ——, and all my other sons born or to be born successively according to seniority for life, With remainder immediately after the interest for life of each such son, UPON TRUST for his first and other sons successively according to seniority in tail male, With remainder :

(2) UPON TRUST for my first and other daughters born or to be born successively according to seniority for life, With remainder immediately after the interest for life of each such daughter, UPON TRUST for her first and other sons successively according to seniority in tail male, With remainder :

(3) UPON TRUST for the daughters successively according to seniority in tail male of each son of mine according to seniority, and so that all the daughters of an elder son of mine may take successively before any of the daughters of a younger son of mine, With remainder :

(4) UPON TRUST for the daughters successively according to seniority in tail male of each daughter of mine according to seniority, and so that all the daughters of an elder daughter of mine may take successively before any of the daughters of a younger daughter of mine, With remainder :

Estates in tail general to all tenants in tail male.

(5) UPON TRUST that all the persons to whom interests in tail male are hereinbefore limited may take interests in tail general successively, and in the same order in which they take interests in tail male, With remainder :

(6) (*Ultimate limitation—Form No.* 19, *p.* 792.)

No. 16.

Limitations in strict settlement, all issue male and female of each son being

(1) UPON TRUST for my eldest son —— for his life, With remainder, UPON TRUST for his first and other sons successively according to seniority in tail male, With remainder, UPON TRUST for his same sons successively according to seniority in tail general, With remainder, UPON TRUST for his first and other

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(*w*) It is conceived that the Wills Act, 1837, s. 32, applies in the case of a class, and that the clause in square brackets is not really necessary.

preferred to younger sons and their issue, &c.

daughters successively according to seniority in tail male, With remainder, UPON TRUST for his same daughters successively according to seniority in tail general, With remainder :

(2) UPON TRUST for my second son ——, my third son ——, and any other younger son or sons of mine successively according to seniority for their respective lives, With remainder immediately after the interest for life of each such second, third, and other younger sons of mine, UPON TRUST for his first and other sons in tail male and in tail general, and his first and other daughters in tail male and in tail general, successively in the same manner and order in which the property hereinbefore devised is limited to the first and other sons and the first and other daughters of my first son the said ——, and so that every elder son of mine and his issue successively in the manner and order aforesaid shall take before any younger son of mine and his issue, With remainder :

With similar remainders to daughters and their issue.

(3) UPON TRUST for my first daughter ——, my second daughter ——, my third daughter ——, and any younger daughter or daughters of mine successively according to seniority for their respective lives, With remainder immediately after the interest for life of each daughter of mine, UPON TRUST for her first and other sons in tail male and in tail general, and her first and other daughters in tail male and in tail general successively in the same manner and order in which the property is hereinbefore limited to the first and other sons, and the first and other daughters of my said first son, and so that every elder daughter of mine and her issue successively in the manner and order aforesaid shall take before any younger daughter of mine and her issue, With remainder :

To widow for life.

(4) UPON TRUST for my wife for her life with remainder :

(5) (*Ultimate limitation—Form No.* 19, *p.* 792).

No. 17.

Life interest and general power of appointment to an only son who is an infant with remainder to his sons successively according to seniority in tail male and in tail with remainder to

(1) UPON such trusts and in such manner generally as my son ——, if of full age, shall from time to time or at any time by deed revocable or irrevocable or by Will or codicil appoint AND in default of and until and subject to any such appointment :

(2) UPON TRUST for my said son during his life, With remainder UPON TRUST for his first and other sons successively according to seniority in tail male, With remainder UPON TRUST for the same sons successively according to seniority in tail general, With remainder :

(3) UPON TRUST (by virtue of the statutory provisions applicable to the case) for my Trustees on the statutory trusts

for sale and otherwise requisite for giving effect to the following trusts, namely—

his daughters as tenants in common in tail.(*x*)

(i) UPON TRUST for all the daughters of my son in equal shares as tenants in common in tail general, With cross-remainders between them as to accruing as well as original shares in tail general, and if there shall be but one such daughter then as to the entirety UPON TRUST for such only daughter in tail general, With remainder;

(ii) UPON TRUST for my brother —— in fee simple or absolutely.

No. 18.

Limitation of estates to go along with a peerage, following limitations to the testator's own issue male.(*y*)

UPON TRUST that the several persons (other than myself and my issue male) who are or shall be in the line of the heirs male of the body of —— first Earl of X. may take successively the following interests and in the following order and manner, that is to say, that each of such several persons (other than as aforesaid) born previously to the date of my death shall take an interest for his life [without impeachment of waste], With remainder immediately after his death UPON TRUST for his first and other

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Minorities.

(*x*) This Form enables the son to appoint the equitable fee simple to himself. During the minority the personal representatives or S. L. Act trustees will have the statutory powers of a tenant for life and the legal estate in the settled land will be vested in them: S. L. Act, 1925, s. 26. If the son, on attaining full age, appoints the property to himself absolutely before a vesting assent is made in his favour, he can call on the personal representatives to make an absolute assent without nominating S. L. Act trustees, unless there are subsisting family charges or powers of charging which would keep the settlement on foot: S. L. Act, 1925, ss. 1 and 3, as amended by L. P. (Amend.) Act, 1926, s. 1. Even if a vesting assent is executed by reason of the subsistence of family charges he, as absolute owner, can deal with the legal estate in the settled land, subject to the family charges, without requiring the capital money to be paid to the S. L. Act trustees. But he has an option to make title under S. L. Act, 1925, s. 20 (1) (ix), free from the family charges, this will still be the usual course: L. P. Act, 1925, s. 42, save when he requires to raise money subject to the family charges: S. L. Act, 1925, s. 16: *Re Egerton* (1926), W. N. 107; 95 L. J. Ch. 153.

Appointment to self before vesting assent.

Children *en ventre sa mère* who might take under the limitations of a Will if born.

(*y*) This will follow the first part of Form No. 13, p. 786. The Act 10 Will. 3, c. 22 (1698, cited in Ruff as 10 & 11 Will. 3, c. 16, repealed L. P. (Amend.) Act, 1924, 10th Sched., by reason of the abolition of legal contingent remainders) which preserved contingent remainders (created before 1926) of posthumous children without the intervention of trustees to preserve them did not expressly refer to limitations under Wills. The statute appears to have been passed mainly for the purpose of removing the doubts which arose in the case of a Will in *Reeve* v. *Long* (1694), 1 Salk, 227. At the end of that case Mr. Butler's note to Co. Litt. 298 (3) is cited, in which he says that *Reeve* v. *Long* was decided by the Lords against the opinion of all the judges, and that "there is a tradition that as the case of *Reeve* v. *Long* arose upon a Will the Lords considered the law to be settled by their determination in that case, and were unwilling to make any express mention of devises made in Wills, lest it should appear to call in question the authority or propriety of their determination. Besides, independently of *Reeve* v. *Long* the words of the Act might have been construed, sons (not being persons who would also take interests for life) successively according to seniority in tail male, and so that each of such several persons (other than as aforesaid) shall take their interests successively in the order in which as heirs male of the body of the first Earl of X. they would succeed to the Earldom of X.

No. 19.

Limitation to heir by purchase.(z)

UPON TRUST in fee simple for the person or persons who at the time when all the limitations hereinbefore contained shall have determined or become incapable of taking effect, shall answer the description of my own right heir or right heirs, such persons if more than one to take (subject to the implied statutory trust for sale), in the like shares as they would have taken on a devolution by descent from me under the general law in force before 1926 in regard to freehold land.

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without much violence, as applying to settlements made by Will, as well as settlements made by deed : see also Vaizey, 1091 *et seq.*; Challis' Real Property, 3rd ed., 140 ; Jarman, 6th ed., 1443, 1704 ; *Barret* v. *B.* (1744), 3 Atk. 203.

Trustees to preserve contingent remainders.

Thus even before 1926 the Form in the text did not require a limitation to trustees to preserve contingent remainders in favour of posthumous children. It was not, however, clear, under the old law, what happened to the legal estate during the period between the determination of the prior limitation and the birth of the child, *e.g.*, under a limitation to A. for life with remainder to his first and other sons successively according to seniority in tail male, with remainder to B. (A.'s brother) for life with remainder to his first and other sons successively according to seniority in tail male, with remainder to X. for life, where B. died shortly before A. leaving a child *en ventre sa mère* at A.'s death. If the legal estate till the birth went over to X. with a shifting use back to B.'s child if a son and born alive, what is X.'s position in the meantime ? *Semble*, he was entitled to the intermediate rents and profits only, as a trustee for the child and could not have exercised the S. L. Act powers : 2 Vaizey, 1012.

Legal estate, how vested pending contingency.

After 1925 the legal estate in settled land will either be in personal representatives or in tenants for life of full age or statutory owners (including S. L. Act trustees during a minority) or in the S. L. Act trustees if there is no tenant for life or statutory owner ; in each case they will be the persons to exercise the statutory powers. In the case in question they, as estate owners, will retain the intermediate rents and profits till the child *en ventre sa mère* is born, thereafter the statutory powers of maintenance become applicable (T. Act, 1925, s. 31, applies if the settlement was created after 1925) ; as to powers of management : S. L. Act, 1925, s. 102. Legal estates converted into equitable interests do not fail : L. P. Act, 1925, 1st Sched., Pt. I. As to what equitable interests can be created after 1925 : *ib.*, s. 4.

Heir taking "by purchase."

(z) The Inheritance Act, 1833, s. 3, provides that under a devise to a testator's heirs, the devisees take by purchase and not by descent. The above Form postpones the vesting of the ultimate limitation until all the prior limitations have determined or failed, and it is conceived is generally preferable to an ultimate limitation UPON TRUST for my own right heirs, which vests the estate at the testator's death in the heir by purchase : *Owen* v. *Gibbons* [1902], 1 Ch. 636 ; 71 L. J. Ch. 338 ; and see Carson, 2nd ed., 379, *et seq.*

"Heir" may take personalty.

Where the limitation is created by an instrument which comes into operation after 1925, the person to take "by purchase" in equity either real *or personal*

No. 20.

Clause cutting down estates of tenants in tail born in testator's lifetime to interests for life.(*a*)

(1) WHERE any person who under the limitations hereinbefore contained, either taken alone or in conjunction with this present provision, would become a tenant in tail male [or in tail (*b*)] by purchase of the property hereinbefore devised is born or *en ventre sa mère* (*c*) in my lifetime, then I revoke the interest [or interests (*b*)] in tail male [or in tail (*b*)] limited to any and every such person.

(2) WHERE an interest in tail male of any person is so revoked, then, instead of and by way of substitution for such interest, the property in which but for this clause that person would have taken such interest in tail male, shall (but subject to and in remainder after any interests preceding such interest in tail male), be held—

(a) Upon trust for the same person for life with remainder;
(b) Upon trust for the first and other sons of the same person, successively according to seniority in tail male;

With the like remainders over as, under the limitations of my Will taken with this clause, are limited after such revoked interest in tail male.

[(3) WHERE an interest in tail general of any person is so revoked, then instead of and by way of substitution for such interest, the property in which, but for this clause, that person would have taken such interest in tail general shall (but subject to and in remainder after any interests preceding such interest in tail general), be held :—

(i) In the case of a person who had no interest in tail male—
  (a) Upon trust for the same person for life, with remainder;
  (b) Upon trust for the first and other sons of the same person successively according to seniority in tail male;

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estate as "heir" will be the person who would under the old law have answered the description of "the heir, either general or special, of the deceased in respect of his freehold land"; this rules out special customs of descent. Though devolution to the "heir" on an intestacy has (subject to a temporary exception affecting lunatics: Ad. of E. Act, 1925, s. 51 (2)) been abolished: *ib.*, s. 45, this does not affect the right of any person to take beneficially as heir by purchase: *ib.*, s. 51 (1).

(*a*) This Form is to come immediately after the limitations of the land.

(*b*) The words in square brackets in this Form are only required when estates in tail general are given.

It is assumed that all estates for life are made unimpeachable for waste, see Form No. 5, p. 781.

(*c*) See *Villar* v. *Gilbey* [1907], A. C. 139; 76 L. J. Ch. 339; *Re Griffiths* [1911], 1 Ch. 246; 80 L. J. Ch. 176.

(ii) In any case (but as respects a person who had no interest in tail male, subject to and in remainder after the life interest of that person and the interests in tail male of the first and other sons of that person)—

(a) Upon trust for the first and other sons of the person whose interest in tail general is so revoked, successively, according to seniority in tail general; With remainder

(b) Upon trust for the first and other daughters of the same person successively according to seniority in tail male; With remainder

(c) Upon trust for the same daughters successively according to seniority in tail general;

With the like remainders over as, under the limitations of my Will taken with this clause, are limited after such revoked interest in tail general.]

No. 21.

Direction for barring the entail of, and settling another estate.(*f*)

(1) Every person who shall become entitled as tenant in tail [male or in tail] in possession to the estates for the time being subject to the limitations of the Settlement under which I am now tenant for life, dated, &c., and made between, &c., and who shall also become tenant for life in possession under the limitations hereinbefore contained of the mansion, lands, and property hereby devised shall within one year after becoming so entitled as tenant in tail [male or in tail] in possession or being an infant within one year after attaining the age of twenty-one years, whichever event last happens, be bound at his own cost [at the cost of my estate] effectually to bar his interest in tail [male or in tail] in the estates comprised in the said Settlement and to settle the same by a vesting instrument Upon the trusts and subject to the powers and provisions hereby declared concerning the property hereinbefore devised [and the Settlement to be made as aforesaid may be varied by a trust instrument (supplemental to my Will) containing powers to appoint jointures and charge portions of such respective amounts, and the vesting instrument may also contain all such additional powers and provisions, and both instruments may as regards matters of detail be in such form generally as my Trustees may at their absolute discretion approve or as may be approved by the Chancery Division of the High Court of

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(*f*) The court, if of opinion that it will be for the benefit of a lunatic, can order his committee to perform the above condition and resettle the estate: *Re Earl of Sefton* [1898], 2 Ch. 378; 67 L. J. Ch. 518.

Justice, and any Settlement approved by my Trustees or the Court shall be deemed a proper settlement made pursuant to the direction aforesaid], and my Trustees may by any writing signed by them or the Court may by order extend the time for making the settlement :

Forfeiture; provision in default.

(2) If any person becoming so entitled as aforesaid neglects or refuses to make such settlement as hereby directed, then at the expiration of the time limited for the making thereof by him the interest for life hereinbefore limited to him and all powers annexed thereto and the interests hereinbefore limited to his issue in the property hereinbefore devised shall absolutely cease and the said property shall be held on the same trusts as if such person were dead and there were a total failure of his issue,(g) and a subsidiary vesting instrument shall be executed by the estate owner at the cost of my estate in accordance with section seven of the Settled Land Act, 1925.

No. 22.

Name and arms clause.(h)

(1) Every person who under the limitations hereinbefore contained becomes entitled as tenant for life or as tenant in tail male or in tail by purchase to the property hereinbefore devised in settlement or to property representing the same shall (unless prevented by death or accident)—

(i) take, use and bear, in all deeds and writings which such person shall sign, and upon all occasions, my surname [*or* the surname of ——] either without any other surname or with and after any other surname ;

(ii) use and continue to use my arms [*or* the arms of ——] or quarter the same with the family arms of the person bound by this clause ;

(iii) apply for and endeavour to obtain a Royal Licence or take such other steps as may be requisite to authorise the user and bearing of the said surname and arms :

Forfeiture of estates.

(g) S. L. Act, 1925, s. 106, does not prevent a forfeiture taking place for any reason other than on account of the exercise of the statutory powers ; and see *ib.*, s. 20 (1) (vi).

Contingent remainder or executory devise.

(h) See notes, Settlements (Real), Form 21, p. 261, *et seq.* The question whether a devise had, before 1926, to be construed as a contingent remainder or executory devise was one of law, it was not affected by the intention of the testator unless the Will showed an intention to make alternative gifts, one as a contingent remainder, and the other as an executory devise : *White* v. *Summers* [1908], 2 Ch. 256 ; 77 L. J. Ch. 506. After 1925 the distinction will not be material save to ascertain what interests can be defeated by a disentailing assurance. All future interests will take effect by way of trust. As to restrictions on executory limitations : L. P. Act, 1925, s. 134.

(2) WHERE any person becoming so entitled shall—

- (a) refuse or neglect to take, use and bear the said surname and arms or to take such steps as aforesaid,
- (b) at any time discontinue to use and bear the said surname and arms ;

then and in every such case—

- (i) if the person who so refuses or neglects or discontinues as aforesaid is a tenant for life—
  - (a) the interest for life of that person,
  - (b) all powers annexed thereto,
  - (c) in the case of a woman every rentcharge already appointed under any power herein contained in favour of her husband,

shall absolutely determine and become void, and the said property shall immediately be held by the estate owner, personal representatives, trustees or other persons in whom it is vested during the residue of the life of the person whose interest for life so determines UPON TRUST from time to time to pay the income of the property to or permit the same to be received by the persons who would for the time being be entitled thereto under the limitations of my Will if that person were dead ; but not so as to accelerate any jointure, portions or other charges already appointed or charged by that person ;

- (ii) if the person who so refuses or neglects or discontinues as aforesaid is a tenant in tail male or in tail—

the interest in tail male or in tail of that person shall absolutely determine, and the said property shall immediately be held in trust for the person next in remainder under the limitations of my Will, in the same manner as if the person whose interest is so made to determine were dead and there were a general failure of the issue inheritable to the interest which is so made to determine :

(3) ALL necessary vesting instruments shall be executed which are consequential on the change of ownership in accordance with section seven of the Settled Land Act, 1925 :

(4) PROVIDED that the obligations to take, use and bear and continue to use and bear the said surname and arms, and to take such steps as aforesaid, and the foregoing provisions for cesser of interests shall not apply—

- (a) to a peer or peeress,
- (b) to an infant unless and until the infant attains the age of twenty-one years,

(c) to a person who would forfeit other property by compliance with the obligation,

(d) except so far as relates to a discontinuance to use and bear the said surname and arms, to a person who already uses and bears the same,

(e) save as next hereinafter mentioned, to a woman during coverture :

(5) The obligations aforesaid shall apply to the husband of every woman, not being a peeress in her own right or in right of her husband, who becomes entitled as aforesaid—

(a) if and so far as such obligation would have applied to him in case he had himself become so entitled,

(b) notwithstanding that his wife may have previously complied with the same,

(c) as from his marriage or from the time when his wife becomes so entitled, whichever event last happens.

Any refusal, neglect or discontinuance by any such husband shall be deemed to be a refusal, neglect or discontinuance by his wife, and the foregoing provisions for cesser of interests shall apply to her accordingly :

(6) PROVIDED that in every case (except a case of discontinuance to use and bear the said surname and arms)—

(a) one year from the date when the obligations become binding shall be allowed for compliance therewith,

(b) the provisions for cesser of interests shall be postponed accordingly:

(7) THOSE provisions shall take effect—

(i) immediately in the case of a discontinuance,

(ii) in other cases, upon the expiration of such one year, if the obligations have not been complied with.

No. 22A.

Request to use name and arms.

I REQUEST that every person who under the limitations hereinbefore contained becomes entitled as tenant for life or as tenant in tail male or in tail to the property hereinbefore devised in settlement shall at all times take, use and bear and continue to use and bear my surname, either without any other surname or with and after any other surname, and my arms or quarter the same with his or her family arms, and take all steps which may be requisite to authorise the user and bearing of the said name and arms, but the non-compliance with this request shall not give rise to any forfeiture or cesser of interest.

SECTION IV.

TRUSTS OF TERMS.

No. 23.

Trusts of term for paying off incumbrances out of rents and profits, provision being made for the person entitled in possession subject to the term.(*i*)

(1) MY Trustees shall stand possessed of the said term of —— years UPON TRUST during the subsistence of the trusts of my Will to enter into possession of the premises and out of the net yearly rents and profits thereof (after payment thereout of all costs of repairs, insurance, rents, rates, taxes, and other outgoings), in the first place, to pay by equal half-yearly payments to, or otherwise apply for the benefit of the persons who, under the limitations hereof would, for the time being, if of full age and but for the said term, be entitled in possession to the property such yearly sum not being less than the yearly sum of £——,(*j*) as my Trustees in their absolute discretion without being liable to account think fit, and subject to the payment or application of such yearly sum, my Trustees shall (until the incumbrances hereinafter mentioned have been discharged) accumulate (*k*) the balance of the net rents and profits in the way of compound interest by investing the same, and the resulting income thereof in any of the investments (other than in the purchase of land) hereinafter authorised with power to vary investments :

(2) MY Trustees shall stand possessed of the fund to be accumulated as aforesaid UPON TRUST to apply the same from time to time in or towards the discharge of all incumbrances, not being yearly or periodical sums terminable on the dropping of a life (whether imposed by my Will or otherwise for a purpose for which accumulations may lawfully be made (*l*)), affecting the capital of the premises at my death (including any duties which may become a charge on the property at my death) :

(3) NOTWITHSTANDING the trusts aforesaid, my Trustees may, from time to time, instead of taking possession of the property comprised in the said term, permit the persons of full age and

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(*i*) This Form is intended for use where estates are heavily incumbered. The term should be limited in priority to the first life estate. A yearly sum is made payable to the person entitled in possession under the limitation, and the balance of the income is to be accumulated to discharge incumbrances.

(*j*) A minimum sum is fixed so as to ensure provision for the person who but for the term would be entitled in possession.

(*k*) A direction to accumulate for the purpose of paying debts for any period is valid: L. P. Act, 1925, s. 164 (2) (i), but the trust must not infringe the perpetuity rule.

(*l*) See L. P. Act, 1925, s. 164 (2), as to accumulating for portions for children and issue; also *Beech* v. *E. St. Vincent* (1850), 3 De G. & S. 679; 19 L. J. Ch. 130.

capacity who for the time being under the limitations hereof would but for the said term be entitled in possession to the property to enter into possession of the whole or any part thereof and receive the rents and profits thereof on giving such undertakings to account to my Trustees for all money received by him or them as my Trustees may require in any such case; and the money so received by my Trustees shall (after paying or allowing for the said yearly sum) be invested, accumulated, and applied in like manner as if it had actually been received in the first instance by my Trustees under the foregoing trusts:

PROVIDED that no trustee of the said term shall be liable for any mistake in any account rendered by any person in possession as aforesaid nor on account of any act or default of such person, and a trustee while in possession shall only be liable for his own individual wilful default or wrongdoing:

(4) THE person from time to time who, but for the said term, would be a tenant for life or statutory owner under the Settled Land Act, 1925, may exercise the powers conferred by that Act [as extended by my Will] and may require a vesting instrument to be made in his favour accordingly:(m)

(5) IF any money shall be raised by way of mortgage under the said powers or any of them for discharging any incumbrance liable to be paid off out of accumulations as aforesaid, then the mortgage or incumbrance so effected shall stand in the place of the incumbrance discharged and shall be deemed to be an incumbrance subsisting at my death:

(6) IF any incumbrance subsisting or deemed to be subsisting at my death is discharged out of capital money (not being money raised by way of mortgage as aforesaid) for the purposes of the said Act arising under my Will, then such discharge shall operate to accelerate the cesser of the said term, but where an incumbrance is transferred it shall not be deemed to be discharged:

(7) IF on the cesser of the said term any accumulations

(m) *Semble* this sub-clause may be required to meet the decision in *Re Frewen* [1926], 1 Ch. 580; 95 L. J. Ch. 297. "Possession" includes the receipt of rents and profits or the right to receive the same, if any: S. L. Act, 1925, s. 117 (1) (xix); a tenant for life includes "a tenant for his own or any other life . . . whose estate . . . is subject to a trust for accumulation of income for any purpose": *ib.*, s. 20 (1) (vi). If there is no tenant for life of full age, then the S. L. Act trustees have the powers: *ib.*, ss. 23, 26. The right of a tenant for life to have a vesting instrument made in his favour cannot be taken from him: *ib.*, s. 106 (1) (b).

Tenant for life subject to a trust for accumulation.

remain by reason of the application of such capital money in manner last aforesaid the balance of the said accumulations shall be held,(*n*) Upon the trusts upon which capital money arising under the said Act from the freehold property hereinbefore devised in settlement ought to be held :

(8) PROVIDED that if and when any person shall under the foregoing limitations or by virtue of any disentailing assurance become entitled in fee simple in possession or absolutely to the property hereby devised in settlement, then the foregoing trusts shall determine and the said term of —— years cease and be deemed satisfied whether any incumbrances shall then be subsisting or not,(*o*) and nothing herein contained shall confer on any incumbrancer a right to require the trusts of the said term to be executed :

(9) MY Trustees shall have power to raise and pay from time to time out of the accumulated fund or out of the rents and profits aforesaid all costs and expenses incurred in relation to the trusts of the said term, and a statement in writing signed by my Trustees that the said term is satisfied shall be conclusive evidence of the fact so stated.

No. 24.

Trusts of portions term in a Will.(*p*)

MY Trustees shall stand possessed of the said term of —— years :—

(1) UPON TRUST by mortgage (by charge or sub-demise) or sale or demise of the premises or any part thereof for all or any part of the same term, or by receipt of the income thereof, or by sale of timber or minerals, or by all or any of those means or by any other reasonable means to raise for the portion or portions of any child or children of mine living at my death who attain the age of twenty-one years, or being female marry

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(*n*) If the last incumbrance is paid off out of capital money while the trust for accumulation is subsisting any balance should be held as capital money, in other cases accumulations not required go as income.

(*o*) This provision avoids any question arising as to the validity of the trusts of the term which must cease as soon as the property becomes indefeasibly vested.

Equitable terms in Wills and settlements.

(*p*) All terms created by Wills or settlements will take effect in equity, and effect must be given thereto by the estate owner under S. L. Act, 1925, s. 16, or money can be raised by him under *ib.*, s. 71, to answer the purposes of the term. Pending a vesting assent the personal representatives will be in a position to raise any money which may be required : Ad. of E. Act, 1925, Pt. I, and s. 39. As to death duties, see L. P. Act, 1925, ss. 16 and 18. Any legal term which may be outstanding on 1st January, 1926, in the trustees will be converted into an equitable term by the vesting deed, but this will not affect mortgages previously effected : S. L. Act, 1925, 2nd Sch., para. 1 (6), as amended by L. P. (Amend.) Act, 1926, Sch.

under that age (other than and besides a first or only son or any other son or sons [or any daughter or daughters (*q*)], who, before attaining the age of twenty-one years [or being female marrying under that age], shall or would if of full age be or become entitled [indefeasibly otherwise than by the operation of any provision for cesser or shifting clause (*r*)] under the limitations hereinbefore contained to the possession of, or a freehold estate in possession in the property hereby devised in settlement) the [net] sum of money hereinafter mentioned, with interest thereon at the rate of £5 per cent. per annum from my death (that is to say), The sum of £—— if there shall be only one such child, The sum of £—— if there shall be two such children and no more, And the sum of £—— if there shall be three or more such children; such portion or portions to be vested in and payable to such child or children at the age of twenty-one years or in the case of females upon marriage under that age, and if more than one in equal shares [and to be raised and paid free from all death duties and costs] and so that a married daughter shall notwithstanding infancy have power to give a valid receipt for her portion:

Trust for maintenance and education.

(2) UPON TRUST to raise out of the income of the premises, or by the sale of timber, and pay or apply for or towards the maintenance, education, or benefit of any child or other issue for the time being presumptively entitled to a portion or any share therein under the trusts hereof, and until such portion or share becomes payable such yearly sum (not exceeding interest at the rate of £5 per cent. per annum on the then presumptive portion or share of such child or other issue) as my Trustees shall deem proper such yearly sum to be clear of all deductions (except for income tax [and death duties]) and to be applied by my Trustees, or to be paid to the guardians or guardian of such child or other issue for the purposes aforesaid, and so that in the latter case my Trustees shall not be concerned to see to the application thereof:

Advancement clause.

(3) MY Trustees may at any time raise by any of the means

(*q*) Omit the words in square brackets if the daughters take as tenants in common in tail. The words should only be used if the daughters take successively.

Cesser or shifting clause.

(*r*) A child who has become entitled subject only to a liability to be defeated by, *e.g.*, a name and arms clause or a shifting clause, ought not to take a portion, *secus* if liable to be defeated by a power of appointment. These words in square brackets will not generally be required unless there is a cesser or shifting clause.

aforesaid, and at their discretion apply, for the advancement or benefit of any son or other male issue [any child or other issue] presumptively entitled to a portion or a share therein under the trusts of the said term, any part or parts not exceeding together one-half of the presumptive portion or share of any such son or other male issue [any such child or other issue]:

PROVIDED that the amount so raised be taken in part discharge of the portion or share in respect of which it is raised in case such son or other male issue [such child or other issue] eventually becomes entitled to a portion or a share therein:

Maximum capital sum raisable.

(4) PROVIDED that no more than the total principal sum of £—— (*the maximum*) shall be raisable under the trusts aforesaid for portions [and] advancements [costs and death duties], but the excess which would, but for this provision, have been raisable for the purposes aforesaid shall sink into the property affected thereby:

Surplus rents and profits.

(5) SUBJECT to the trusts hereinbefore declared, and to the right of my Trustees to raise by any of the means aforesaid all costs and expenses incurred in relation thereto, the rents and profits of the premises comprised in the said term shall be received by the persons for the time being entitled in reversion immediately expectant upon that term:

Daughters' portions not to be raised if they die spinsters.

(6) PROVIDED that no portion shall be raised for the benefit of any daughter of mine unless and until she marries or has married, but the portion shall, when vested, carry interest at the rate aforesaid, and if any daughter of mine shall die without ever having been married her portion shall not be raised, but on her death shall sink into the property affected:

Issue of child dying in testator's lifetime to take parent's portion.

(7) (i) IF any child of mine dies in my lifetime leaving a child or children living at my death, the portion (if any) to which such child of mine would under the trusts aforesaid have been entitled, if living at my death and having then attained the age of twenty-one years, shall be held IN TRUST for all or any the children or child (living at my death) of such child of mine who attain the age of twenty-one years, or in the case of females marry under that age, and if more than one, in equal shares, and so that a female on marriage may, notwithstanding infancy, give a valid receipt for her portion or share, and accordingly, for the purpose of ascertaining the amount of portions payable under the trusts aforesaid, a child of mine so dying shall be deemed to have survived me and attained the age of twenty-one years, but not so as to vest the portion in that child;

(ii) PROVIDED that if no vested interest shall be taken by the issue of a child of mine dying in my lifetime in a portion under the trust last aforesaid, then that portion shall (without prejudice to the foregoing provisions for maintenance and advancement) sink into the property affected ;

(iii) PROVIDED ALSO, that the foregoing provision as to the portion of a daughter of mine not being raised before her marriage shall apply to the portion or share therein of any female issue of a child of mine dying in my lifetime :

Receipts.

(8) THE receipts by my Trustees or other the trustees for the time being of the said term shall be a complete discharge for all money raisable under the trusts thereof.(s)

No. 25.

Settlement of daughters' portions.(t)

Trust to invest.

(1) NOTWITHSTANDING the trusts aforesaid my Trustees shall retain the portion when raised (u) to which any daughter of mine who survives me shall become entitled under the trusts of the said term, UPON TRUST to invest the same in any of the investments (other than the purchase of land) hereinafter authorised, but so that every investment and change of investment made during the life of such daughter shall be made with her consent :

Income to daughter for life.

(2) MY Trustees shall stand possessed of the portion of such daughter or the investments representing the same, which investments are hereinafter included in the description of such daughter's portion, UPON TRUST to pay the income thereof to such daughter for her life without power of anticipation during any coverture :(v)

Capital and income to issue as daughter appoints.

(3) AFTER her death the capital and income of the portion of such daughter shall be held IN TRUST for all or any one or more, exclusively of the others or other of the issue of such daughter whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement, and otherwise at the discretion of any person and with such gifts over, and generally in such manner, for the benefit of such issue or some or one of them

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(s) The object of this clause is to make it clear that the receipts of portionists will not be required. *Semble,* independently of this clause this would be so : T. Act, 1925, ss. 14, 17 ; clearly this would be so if the money were raised by mortgage.

(t) This Form will follow the last one when so desired. It is not usual to settle a daughter's portion when raisable out of land.

(u) This will not be until the daughter's marriage : see clause (6) of last Form.

Appointed portion cannot be settled.

(v) The daughter's portion cannot be settled by the testator if the portion is appointed to her under a special power, *e.g.*, in the testator's marriage settlement. He could, however, put her to her election to settle it.

as such daughter shall, by deed, revocable or irrevocable, or by Will or codicil appoint ; And in default of and until and subject to any such appointment, IN TRUST for all or any the children or child of such daughter who attain the age of twenty-one years, or being female, marry under that age, and if more than one in equal shares:

Hotchpot.

(4) PROVIDED that any child who or whose issue takes any part of such daughter's portion under any appointment by her shall not, in the absence of any direction by her to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or her or his or her issue into hotchpot and accounting for the same accordingly:

Advancement clause.

(5) MY Trustees may at any time and from time to time, but during the life of such daughter only with her consent in writing, raise any part or parts not exceeding one-half of the presumptive or vested share of any child or other issue of such daughter under the trusts hereinbefore declared and pay or apply the same for the advancement or benefit of such issue as my Trustees think proper :(*w*)

In default of issue, portion made capital money.

(6) IF any daughter of mine shall not have any child who under the trust in default of appointment hereinbefore contained attains a vested interest in her portion, then (subject to the trusts and powers hereinbefore declared in favour of such daughter and her issue) her portion and all statutory accumulations (if any) of income or so much thereof respectively as shall not have become vested or been paid or applied under any trust or power affecting the same shall be held, Upon the trusts and subject to the powers and provisions upon and subject to which capital money arising under the Settled Land Act, 1925, from the freehold property hereby devised in settlement or investments representing the same would be held :(*x*)

Extent of statutory power of advancement.

(*w*) Though the statutory power of advancement (T. Act, 1925, s. 32 (2)) only applies to money or securities or property held on trust for sale and the money, &c., is not by statute or in equity considered as land or applicable as capital money for the purposes of the S. L. Act ; *semble*, the statutory power would have applied in this case, for the portion is not made "capital money" until the trusts in favour of the issue fail or cease. The reason for the restriction on the extent of the power is that where the money has to be raised on the security of land or by means of a term (*e.g.*, a portions term) special trusts are required for this purpose. The power to raise money given by T. Act, 1925, s. 16, does not follow the form used for this purpose.

(*x*) See S. L. Act, 1925, s. 78, as amended ; it is no longer necessary to employ an express trust to purchase land to make the money devolve as land, for this section meets the decisions in *Re Walker* [1908], 2 Ch. 705 ; 77 L. J. Ch. 755 ; and *Re Twopenny* [1924], 1 Ch. 522.

(7) *Power for daughters to appoint life interests to surviving husbands—Wills* (*Personal*), *Form No.* 60, *sub-clause* (7), *p.* 719. *Also power to appoint separate Trustees and to vary trusts on marriage, if desired, see sub-clauses* (8), (9) *and* (10) *of same Form.*

Power to appoint life interest to husband, &c.

No. 25A.

Trusts of a term to raise and pay portions and legacies mentioned in a Schedule.

MY Trustees shall stand possessed of the said term of —— years :

(1) UPON TRUST by mortgage (by charge or sub-demise) or sale or demise of the premises or any part thereof for all or any part of the same term, or by receipt of the income thereof, or by the sale of timber or minerals, or by all or any of those means, or by any other reasonable means to raise and pay the legacies and other capital sums mentioned in the —— Schedule to my Will [and the duties thereon payable at my death] and the costs of raising the same in the manner and at the times provided in that Schedule :

(2) SUBJECT to the trusts aforesaid and to the right of my Trustees to raise by any of the means aforesaid all the costs and expenses incurred in relation thereto, the rents and profits of the premises comprised in the said term shall be received by the persons for the time being entitled in reversion immediately expectant upon that term.(*y*)

SECTION V.

POWERS OF CHARGING.

No. 26.

Power for trustees to raise money for debts and legacies in aid of personal estate.(*z*)

(1) MY Trustees may, notwithstanding any of the trusts hereinbefore limited, or to be limited under any of the powers herein contained, and in priority thereto, but subject to any disposition previously made for money or money's worth, raise by mortgage of the premises, or any of them, [except advowsons and my mansion-house at ——, and the demesnes thereof and the park and other lands usually occupied therewith,] and upon such terms as my Trustees think fit, any money which they shall deem to be required in aid of my residuary

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(*y*) If the residuary personal estate is made to devolve as capital money it will be applicable for paying these legacies, and if sufficient no mortgage will be required to raise them. This form can be made use of in place of the full Form No. 24, *supra*, where all the younger children intended to be provided for can be named.

(*z*) This Form enables the trustees to raise money for administration purposes. An alternative way of effecting this purpose is to limit a term to the trustees preceding all other limitations upon trust to raise the money if required. This power is not generally required, for under Ad. of E. Act, 1925, Pt. I and s. 39, the personal representatives will have ample power to raise money for administration purposes.

[real and] personal estate to pay my funeral and testamentary expenses, death duties, debts, [and] legacies, [and annuities, but so that annuities shall, so far as possible, be paid as they become due out of rents, profits and income, and not by raising a capital sum to provide for the same,] And any person advancing money on mortgage shall not be concerned to enquire whether money is wanted for the purposes of my Will or whether more than is wanted is raised or as to the application thereof :

(2) If any such mortgage is made after a vesting instrument has been executed in regard to the property intended to be charged legal effect shall be given thereto by the estate owner pursuant to section sixteen of the Settled Land Act, 1925.(*a*)

No. 27.

Contingent power for successive tenants for life to limit rentcharges. (*b*)

(1) Every person hereby made tenant for life of the property hereby devised in settlement may, &c. (*continue as in Form No.* 29, *Settlements* (*Real*), *p.* 277, *supra*).

No. 28.

Contingent power for successive tenants for life to charge portions.(*b*)

(1) Every person hereby made tenant for life of the property hereby devised in settlement may, &c. (*continue as in Form No.* 30, *Settlements* (*Real*), *p.* 278, *supra*).

Section VI.

POWERS TO RELEASE RENTCHARGES AND SURRENDER TERMS.

No. 29.

Power for females restrained from anticipation to release their rentcharges.

Every female who under the limitations hereof or under any exercise, &c. (*continue as in Form No.* 31, *Settlements* (*Real*), *p.* 280).

No. 30.

Power for the Trustees of a term to surrender any property comprised in the term in certain events.

Subject to any disposition which may have been made for raising any money, &c. (*continue as in Form No.* 32, *Settlements* (*Real*), *p.* 281).

Powers transferred to tenant for life.

(*a*) Powers conferred by a settlement (including a Will) on the trustees or other persons relating to the settled land (not being merely powers of revocation or appointment) are made exercisable by the tenant for life or statutory owner as if they were additional powers : S. L. Act, 1925, s. 108 (2) ; hence, when the tenant for life (who is a trustee for this purpose : *ib.*, s. 107) has to carry out the transaction pursuant to s. 16 he will of necessity have the requisite power to do so.

(*b*) As the first tenant for life is not ascertained until the testator's death an absolute power of charging, as in Settlements (Real), Forms Nos. 27 or 28, pp. 274–5, is not required, but where the powers are to be exercised by a son of the testator the powers can be enlarged.

SECTION VII.

BEQUEST OF HEIRLOOMS AND RESIDUARY PERSONAL ESTATE SO AS TO DEVOLVE WITH THE LAND DEVISED IN STRICT SETTLEMENT.(c)

No. 31.

Bequest of heirlooms.(d)

(1) I BEQUEATH free of duty all my diamonds and the settings thereof, and also all my pictures, prints, statues, sculptures, articles of vertu, books and plate (hereinafter referred to as the heirlooms), unto my Trustees, UPON TRUST that my Trustees shall allow the same to devolve and be enjoyed as heirlooms along with the freehold property hereinbefore devised in settlement and with any mansion house in which the heirlooms may be kept which is settled with the said property :(e)

Inventories.

(2) FORM 3 of the Statutory Will Forms, 1925 (relating to inventories), is incorporated in my Will and shall apply to the heirlooms :

Tenant for life becomes the trustee of land of every tenure.

(c) There is no longer any object in bequeathing leaseholds separately from freeholds, all land, whatever its tenure, must, when the personal representatives execute a vesting assent, be vested in the tenant for life or statutory owner as the trustee thereof. There are no longer any copyholds to be separately dealt with, and it was never the practice to deal with enfranchised land apart from the other freeholds ; the fact that the manorial incidents may not have been extinguished can make no difference in this respect. It may, however, be convenient that the personal representatives should enter into a compensation agreement before they assent.

What property should be vested in the S. L. Act trustees.

On the other hand the trustees of the settlement are still the proper persons to act as the trustees of heirlooms and other personal estate not being chattels real.

Entailed interests ; fee simple conditional.

The fact that entailed interests (L. P. Act, 1925, s. 130) can be created in personal as well as real property simplifies all the forms relating to strict settlements of personalty ; it should also be noted that a fee simple conditional on the birth of issue formerly affecting copyholds has been converted into an entailed interest : L. P. Act, 1922, 12th Sch., para. (8) (ii).

Legacies and annuities.

(d) After this Form add bequests of pecuniary and other legacies (see Form No. 25A, limiting a term to raise legacies) so as to precede immediately the gift of residue (see next Form). If the residue is settled to devolve as capital money and the eldest son (first tenant for life) is of full age it is often desirable to give the farming stock and mineral plant to him absolutely, see Form No. 4, p. 780. Any annuity to be charged on the land should be given by way of rentcharge, see Forms Nos. 6, 6A and 8, *supra* ; also *Re Beresford-Hope* [1917], 1 Ch. 287 ; 86 L. J. Ch. 182. Personal representatives have power to limit rentcharges to give effect to annuities affecting land : Ad. of E. Act, 1925, s. 40 ; they may also limit terms on trust for raising principal sums : *ib.* This section applies to Wills as well as to intestacies.

Settlement of heirlooms by reference to land.

(e) Where personal estate (including proceeds of sale and heirlooms) is directed to be enjoyed or held with land in which an entailed interest has been created, the direction is sufficient to create a corresponding entailed interest in the personal estate : L. P. Act, 1925, s. 130 (3).

PROVIDED that my Trustees may, from time to time, till the heirlooms become absolutely vested, inspect the same and provide for the custody, preservation, insurance (so far as the heirlooms are capable of insurance) and repair of the heirlooms at the expense of the usufructuary:

Power of sale.

(3) A sale of the heirlooms,(*f*) or any of them, may be made under section sixty-seven of the Settled Land Act, 1925 [with the consent of my Trustees and], without any order of the court:

Exchange, &c.

(4) WITH the consent of my Trustees and at the expense of the usufructuary—

(a) the heirlooms or any of them may be exchanged for other chattels, or

(b) the form or fashion of the heirlooms or any of them may be altered, or

(c) other articles may be substituted for the heirlooms or any of them:

PROVIDED that in any such case the intrinsic value of the heirlooms shall not thereby be diminished:

Power to let heirlooms.

(5) The usufructuary, or if there be no such person of full age, then the statutory owners of the settled land or other persons having power to grant a lease of the settled land, may at his or their discretion (*ff*) let the use and enjoyment of the heirlooms or any of them, together with any mansion or other house containing the heirlooms, by any lease capable of being made of such house:

PROVIDED that the tenant shall—

(a) sign an inventory of the heirlooms delivered to him,

(b) covenant or agree with the lessor to keep such heirlooms in repair during the subsistence of the tenancy,

(c) covenant or agree with the lessor not to assign, underlet or part with his interest under the tenancy without the consent in writing of the lessor:

Indemnity.

(6) During the subsistence of any such tenancy the usufructuary and my Trustees shall not be liable for any loss, damage or depreciation in respect of the heirlooms delivered to the tenant.

(*f*) For Precedent of Agreement for Sale of Heirlooms, see Vol. I, p. 400.

Death duties on heirlooms.

Capital money arising from other settled property can be applied in discharging death duties on heirlooms: *Re E. of Egmont's S. E.* [1912], 1 Ch. 251; 81 L. J. Ch. 250.

(*ff*) The court will not interfere with this discretion: *Re Smith-Bosanquet* (1909), 53 Sol. J. 430.

No. 32.

Bequest of personal estate upon trust for conversion and so as to devolve with the settled land as capital money.

(1) I BEQUEATH all the personal estate not hereby or by any codicil otherwise specifically disposed of, and which I can dispose of by Will in any manner I think proper, either as beneficially entitled thereto or under any general power [including the statutory power to dispose of entailed personal property] (except under [the statutory power to dispose of entailed personal property and except under] a power to which I am bound expressly to refer), unto my Trustees, UPON TRUST that my Trustees shall stand possessed of the same Upon the administration trusts expressed in Form 8 of the Statutory Will Forms, 1925, which form is incorporated in my Will, subject to the following variations, namely—

(a) the expression "my debts" shall include mortgage debts (if any) affecting the real estate and chattels real hereinbefore devised in settlement ;

(b) the expression "duties" shall include duties payable out of capital on my death in respect of the said real estate and chattels real ;

(c) annuities shall, in the first instance, be treated as rentcharges affecting the said real estate and chattels real, but my Trustees shall have power at any time to set aside a fund to answer any annuities or to purchase annuities from the Government or from an insurance office, and thereupon the security or annuity so provided shall be accepted in lieu of the original security or annuity :

Residue to be held as capital money.

(2) So much of the property or the net proceeds of sale thereof as may not be required for the purposes of the said administration trusts shall be held by my Trustees, Upon the trusts and subject to the powers and provisions upon and subject to which capital money arising under the Settled Land Act, 1925, from the freehold property hereinbefore devised in settlement or investments representing the same would be held.(g)

(g) If the personal estate is settled upon particular trusts as *personalty* the appropriate Forms in Wills (Personal) should be used, but it is generally expedient to let the residuary personalty devolve with the land to provide a fund for payment of duties and effecting improvements, leaving the younger children and others to be provided for by means of the trusts of a portion term or rentcharges. It is no longer necessary to impose a trust to purchase land in order to make the money devolve with the settled land: S. L. Act, 1925, s. 78, as amended.

Variation where the residuary personalty is to go to

If the residuary personalty is to be given to the first tenant for life absolutely then strike out from "my trustees" in sub-clause (2) in the above Form and substitute :—

"IN TRUST absolutely for the person of full age who shall first

SECTION VIII.

DEVISE AND BEQUEST OF LAND AND RESIDUARY PERSONAL ESTATE UPON THE TRUSTS OF AN EXISTING SETTLEMENT.

No. 33.

Devise and bequest of land upon trust to settle on the trusts of a settlement.(*h*)

(1) I DEVISE and bequeath my mansion-house of —— and all the real estate and chattels real in or arising in the County of —— which I can at my death dispose of by Will in any manner I think proper, either by virtue of my beneficial ownership or under any general power including the statutory power to dispose of entailed property (but as to leasehold property charged with the payment thereout in exoneration of my other personal estate of the estate duty payable in respect of such leasehold property,(*i*) unto my Trustees for all the estate and interest therein which I have power to dispose of at my death UPON TRUST that my Trustees shall, by means of a vesting assent, convey and settle the premises to the tenant for life or statutory owner under the settlement next mentioned Upon the trusts and subject to the powers and provisions which under a Deed dated, &c. (being the Settlement made in consideration of the marriage of my son —— with ——), shall at my death be subsisting or capable of taking effect with respect to the freehold property thereby settled, but not so as to increase or multiply charges or powers of charging:(*j*)

(2) My Trustees shall in the said Vesting Assent nominate the trustees of the said Settlement for the purposes of the Settled Land Act, 1925, as the trustees for these purposes and refer to any additional powers conferred by that Settlement

the first tenant for life absolutely.

become entitled under the foregoing limitations to the first estate of freehold in the freehold property hereinbefore devised in settlement."

Settlements by reference.

(*h*) This form takes the place of the old devise to the uses or upon the trusts of a settlement which was used before 1898. The Vesting Assent will be a subsidiary vesting instrument, see S. L. Act, 1925, s. 10. The S. L. Act trustees of the settlement which is referred to become the trustees of the Will so far as it creates a settlement by reference: *ib.*, s. 32. As to estates settled by different settlements on the same limitations: *ib.*, s. 91.

(*i*) See *Re Culverhouse* [1896], 2 Ch. 251; 65 L. J. Ch. 484.

Multiplication of charges.

(*j*) The property devised does not become subject to charges created under the settlement before the death of the testator: *Re Berners* (1892), W. N. 171; *Re Beaumont* [1913], 1 Ch. 325; 82 L. J. Ch. 183; charges and powers of charging are not increased if the land is acquired with capital money: S. L. Act, 1925, s. 10 (5).

and any express power to appoint new trustees thereof which power shall apply to the settlement by reference constituted by any Will and the said Settlement.

No. 34.

Appointment of land and capital money on the trusts of a voluntary settlement of capital money made by the testator and his eldest son.

IF I survive my son —— then in exercise of the powers for this purpose conferred on me as such survivor by a Disentailing Assurance dated, &c., and made, &c. (being a disentailing assurance of the property subject to the limitations of ——) and of all other powers, I make the following appointments, namely :—

(1) I APPOINT that all the real estate and chattels real which at my death may be subject to the said power of appointment shall be held Upon the trusts and subject to the powers and provisions which under a Deed (hereinafter called the Settlement of 19—) dated, &c., and made, &c., may at my death be subsisting or capable of taking effect with respect to the freehold property thereby directed to be purchased out of the capital money and investments thereby settled, and as if the said freehold property had been actually purchased and settled pursuant to the direction contained in the Settlement of 19—, but not so as to increase or multiply charges or powers of charging :

(2) FOR giving effect to the said appointment I direct that all necessary vesting instruments shall be executed for vesting the real estate and chattels real so appointed in the tenant for life or statutory owner under the Settlement of 19— on the trusts aforesaid and for nominating the trustees thereof as trustees for the purposes of the Settled Land Act, 1925 :

(3) I APPOINT that all capital money and investments (if any) which at my death may be subject to the said power of appointment shall be vested in the trustees or trustee for the time being of the Settlement of 19—, to be held by them or him Upon the trusts and subject to the powers and provisions thereby declared concerning the capital money and investments thereby settled, or such of the same as may be subsisting or capable of taking effect.(*k*)

No. 35.

Bequest of personalty to devolve with land settled by a realty settlement. (*l*)

(1) I BEQUEATH to my Trustees all the residue of my personal estate UPON TRUST to collect and get in and convert the same into money, and out of the proceeds and out of my ready money to pay my funeral and testamentary expenses (including all

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(*k*) See Dissertation on Settlements (Real), "Scheme for Evading Stamp Duty," p. 76 ; also note on "Stamps on Voluntary Settlements," p. 99.

(*l*) See Notes to Form No. 33 ; also S. L. Act, 1925, ss. 32 and 78.

death duties payable out of capital on my death), debts, and legacies, and to pay the net residue of such proceeds and of my ready money, after answering the purposes aforesaid, to the trustees for the time being for the purposes of the Settled Land Act, 1925, of the Settlement dated, &c., of real estate and chattels real in the County of ——, to be held by such last-mentioned trustees Upon the like trusts and subject to the like powers and provisions as if the same were capital money arising under the Settled Land Act, 1925, from freehold property settled by that Settlement:

(2) ANY investments not necessary to be converted into money for the purposes of my Will, and which the trustees of the said Settlement would be authorised to retain, may, instead of being converted, be transferred to the trustees of the said Settlement:

(3) UNTIL payment or transfer as hereby directed of money and investments representing the net residue of my personal estate, the annual income of such net residue shall be applied and disposed of in like manner as if the payment or transfer had been actually made.

SECTION IX.

PROVISIONS BY WAY OF EXTENSION AND VARIATION OF THE SETTLED LAND ACT.(m)

No. 36.

Additional powers to be inserted in vesting instruments.(n)

THE following additional powers relating to the settled land shall pursuant to section one hundred and nine of the Settled Land Act, 1925, take effect as if conferred by that Act and be exercisable by the tenant for life or statutory owners or other estate owners for the time being (including personal representatives in whom the settled land may be vested) and shall be referred to in vesting instruments accordingly (namely) :—

Further assurances.

(1) The powers conferred by section sixty-six of the Law of Property Act, 1925, may be exercised without the leave of the Court :

Leave of the Court.

(2) All the powers which are by the Settled Land Act, 1925,

(m) Only such of these Forms as the draftsman may, under the particular circumstances, deem essential should be used.

(n) See Settlements Real, p. 295, *et seq.*, Forms Nos. 52 to 60, and notes thereto.

made exercisable subject to the leave of the Court being obtained may be exercised with the consent of the trustees of the settlement without any such leave :

Consent of trustees.

(3) All the powers which are by that Act made exercisable with the consent of the trustees of the settlement may be exercised without any such consent :

Transactions generally.

(4) In particular any transactions which could have been authorised by the Court under section sixty-four of the said Act may be authorised by the trustees of settlement and that section shall have effect free from the restrictions relating to improvements :

Trustees acting.

(5) Where the trustees of the settlement are acting as personal representatives or as statutory owners no consent to the exercise of any power in lieu of the consent of the trustees of the settlement shall be requisite :

Powers of attorney.

(6) Powers of attorney may be granted under section twenty-five of the Trustee Act, 1925, free from the restrictions and obligations imposed by sub-sections (2) to (5) inclusive of that section, and may be made irrevocable for any period not exceeding one year :

Power to act on expert advice.

(7) The tenant for life, statutory owners and trustees of the settlement may act on expert advice and shall not be responsible for any mistake occurring in such advice :

Mining rents.

(8) All mining rents and royalties shall be applicable as income and no part thereof need be set aside as capital.

NOTE.—*The Forms required in relation to capital money, improvements, &c., contained in Settlements (Real), p.* 289, *et seq., which are for use in trust instruments, can be used for Wills with the necessary alterations of* " my " *for* " the " *trustees,* " my Will " *for* " this Settlement," *&c.*

Where the residuary personalty is not made capital money, but is disposed of as personal estate and powers of investment declared in respect of it, the following Form may be substituted for Form No. 44, *Settlements (Real), pp.* 290–93.

No. 36A.

Enlarged power of investment where the residuary personalty is given as personal estate and not settled as capital money.

CAPITAL money arising under the Settled Land Act, 1925, and money representing surplus rents and profits during a minority may be invested in any of the investments in which my residuary personal estate is hereby authorised to be invested with power to vary such investments.

SECTION X.

MISCELLANEOUS PROVISIONS.(*o*)

No. 37.

Power to pay insurance premiums to trustees in lieu of effecting fire insurances.

ANY tenant for life or statutory owner may, instead of effecting any policy of insurance against damage by fire to any buildings (other than any principal mansion house) pay the amount of the premiums which in the opinion of my Trustees would have been payable for effecting and maintaining any such insurance to my Trustees, and the money so paid or during a minority retained by them shall be held as capital money arising under the Settled Land Act, 1925, from the freehold property hereinbefore devised in settlement, and any capital money may be applied in making good any damage by fire to any such buildings.

No. 38.

Statutory owners may present to livings during minorities.(*p*)

DURING the minority of any person who, under the limitations hereinbefore contained, is or would if of full age be entitled to the settled property as tenant for life or as tenant in tail male or in tail by purchase or in any other case where the powers conferred by the Settled Land Act, 1925, are exercisable by statutory owners, the statutory owners may present a fit person to any ecclesiastical benefice either absolutely or subject to such lawful terms, if any, as to resignation as the statutory owners deem proper.

No. 39.

Power for professional trustees or executors to charge.

ANY executor or trustee (including a term trustee) being a solicitor or other person engaged in any profession or business shall be entitled to be paid all usual professional or other charges for business transacted, time expended, and acts done by him, or any partner of his, in connexion with the trusts hereof, including acts which a trustee or executor, not being in any profession or business, could have done personally.

No. 40.

Power to appropriate, &c.

(1) IN the execution of any of the trusts or powers hereof my Trustees may, as between the representatives of a deceased

Capital money invested on mortgage where right of redemption is barred.

Accumulations.

Management during a minority.

(*o*) Under L. P. Act, 1925, s. 31, if the right of redemption in any mortgage vested in the S. L. Act trustees is barred, the land may be made subject to the settlement by means of a subsidiary vesting deed. Before this is done the fee simple or head term should be acquired by enlargement or otherwise, under *ib.*, ss. 88 (3), 89 (3). It is no longer necessary to make any express provision as to the destination of accumulations made during a minority; this is now sufficiently provided for by T. Act, 1925, s. 31. The S. L. Act trustees have additional powers of management during a minority; S. L. Act, 1925, s. 102; they also have the statutory powers of a tenant for life: *ib.*, s. 26, unless the settled land is vested in personal representatives, when the latter will have the powers: *ib.*, see also Ad. of E. Act, 1925, s. 39; L. P. Act, 1925, s. 28.

(*p*) This form will be used when an advowson is devised in settlement.

tenant for life and his successors in title or otherwise, decide what money represents income and what represents capital, and may exercise the statutory power of appropriation as varied by Form 6 of the Statutory Will Forms, 1925, which form shall be incorporated in my Will.(q)

No. 41. Power for a Trustee who is personally interested to act.

THE said —— may, &c. (*continue as in Form No.* 79, *Wills* (*Personal*), *p.* 739, *supra*).

No. 42 General wide indemnity to tenant for life and trustees.

IN the professed execution of the trusts and powers of my Will or of any statutory powers, neither a tenant for life nor an executor or trustee shall be liable, &c. (*continue as in Form No.* 66, *Settlements* (*Real*), *p.* 301, *supra*).

No. 43. Power to appoint new trustees.(*r*)

THE person (if any) of full age for the time being entitled to the possession or to the receipt of the rents and profits of the property hereby settled shall have power from time to time to appoint a new trustee or new trustees of my Will [and of any term hereby limited], and of any compound Settlement consisting of my Will, and of any instruments which may be executed or come into operation at any time after my death.

No. 44. Marginal notes.

THE marginal notes to my Will shall be proved therewith but shall not affect the construction thereof.

No. 45. Schedule of rentcharges.

THE —— SCHEDULE.

Particulars of yearly rentcharges hereby limited.

Name of Annuitant or Rent-chargee.	Address and Description.	Conditions (if any) of Rentcharge.	Amount of Yearly Rentcharge.

(*q*) A direction purporting to oust the jurisdiction of the courts is void: *Re Raven* [1915], 1 Ch. 673; 84 L. J. Ch. 489. In some cases the power should be extended to authorise funds to be set aside to provide the income of a share. Jurisdiction.

(*r*) In any vesting assent made for giving legal effect to the Will, the person who during his life has power under this clause to appoint new trustees must be nominated as the person having power to appoint new trustees of the settlement: S. L. Act, 1925, ss. 5–8. When a new trustee of the Will is appointed a memorandum of the appointment must be endorsed on the vesting assent and a deed, declaring who are the existing trustees of the settlement, must be executed. The latter is the deed affecting the legal estate, with which a purchaser will be concerned, not the deed appointing Appointments of new trustees.

No. 46.

Schedule of legacies.(s)

THE —— SCHEDULE.

Particulars of legacies raisable under the trusts of the term of —— years.

Name of Legatee.	Address and Description of Legatee.	Conditions (if any) of Legacy.	Amount of Legacy.		
			£	s.	d.

SECTION XI.

END OF WILLS AND CODICILS.

No. 47.

End of codicil.

SUBJECT as aforesaid I confirm my said Will [except so far as it is revoked or varied by my first [or second, &c.] Codicil, and I confirm that [and my other] Codicil[s]] (*continue as in next Form, using words in square brackets*).

No. 48.

Testimonium and attestation clause to Will or codicil.

IN WITNESS whereof I have hereunto set my hand the day and year first above written.(t)

[*Insert Schedules here if used.*]

Signed by the above named —— as [a codicil to] his last Will in the presence of us both present at the same time, who in his presence and the presence of each other have hereunto set our names as witnesses.

[*Testator's signature.*]

[*Two witnesses, adding addresses and descriptions.*]

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trustees of the Will, for that is a "trust instrument," and does not come on the title. There must not be more than four S. L. Act trustees (individuals) nor less than two, but a single "trust corporation" may act as a sole S. L. Act trustee.

(s) Where schedules are used the testimonium should come at the end of the Will, but the attestation clause should be placed after the schedules.

(t) The date is at the beginning of the Will: see Form No. 1, p. 778. This is particularly convenient if the document is at all long.

PART II.

PRECEDENTS OF WILLS (REAL).

No. I.

WILL *settling* Land *on the testator's* First *and* Other Sons *successively for* Life, *with remainder to their* Issue *successively in* tail male *with remainders over in strict settlement to devolve with a* Peerage *where the testator has* No Issue *living.* Wife *given a* Jointure. Younger *children given* Portions. *Provision for* Cutting *down* Estates Tail *to* Life Estates. *Direction to bar the* Entail *of and* Resettle *another* Estate. Powers *for successive tenants for life to charge* Jointures *and* Portions. Enlargement *of* S. L. Act *powers. Bequests of Chattels as* Heirlooms. Legacy *of rents in arrear, farming and mining plant.* Residuary Personalty *settled to devolve with the land.* Variations *where the testator* Has Issue *living.* Also Variations *where the Limitations give estates in* Tail General *and where females take either* Successively *or as* Tenants *in* Common *and where an* Inalienable Life Estate *is given.*

I, A. B., of, &c., hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last Will which I make this —— day of ——, 19—, and for the purpose of convenience I have divided this Will into —— Parts.(*a*)

Commencement.

(*a*) The division into Parts is not, of course, essential, and may be omitted if desired. It tends to simplify a long Will. A precedent without reference to forms is not given in the case of a realty Will, for such a document will be prepared by an expert. If required, add after the date "in contemplation of my intended marriage with ——, and I declare that this Will shall not take effect unless the said marriage is solemnised within six months from the date hereof." And see Note to Form No. 1, p. 778.

In contemplation of marriage.

PART I.

Appointment of executors and Trustees, incorporation of Statutory Forms and bequest of rents in arrear, Farming and Mining Plant.

1. *Appointment of executors and trustees for the purposes of S. L. Act—Form No.* 3, *p.* 779.

[*Appoint guardians if required—Wills* (*Personal*), *Form No.* 4, *p.* 671.]

2. *Incorporation of Pt.* I *Statutory Forms—Form No.* 3A, *p.* 780.

3. *Bequest of rents in arrear and of farming and mining plant —Form No.* 4, *p.* 780.

PART II.

Devise and Settlement of Land.

Devise of freeholds in settlement.

4. *General devise of land, life interests sans waste, &c.—Form No.* 5, *p.* 781.

(1) *Rentcharge to wife—Form No.* 6, *p.* 782, *or rentcharges to divers persons mentioned in a Schedule—Form No.* 6A, *p.* 782.

(2) *Portions term to Trustees, or Term for providing for legacies and capital sums mentioned in a Schedule—Form No.* 9, *p.* 783.

Limitations to testator's sons in strict settlement so as to follow a peerage.(*b*)

(3) *Limitations to testator's first and other sons successively for life, with remainder to their issue successively in tail male—Form No.* 11, *p.* 785, *omitting words in square brackets.*(*c*)

Remainders over in strict settlement to devolve with a peerage—Form No. 18, *p.* 791.

Variation where estates in tail general are given, and where females take either successively or as tenants in common.

Variation where the testator has issue living, and where an inalienable life estate is given.

Ultimate remainder—Form No. 19, *p.* 792.

5. *Clause cutting down estates of tenants in tail born in testator's lifetime to interests for life—Form No.* 20, *p.* 793.

[5A. *Direction for barring the entail of and settling another estate, if required—Form No.* 21, *p.* 794.]

(*b*) Where estates in tail general are given omit Forms Nos. 11, p. 785, and 18, p. 791, and substitute, if the testator has no issue living, Form No. 12, p. 785, or, if the testator has issue living, Form No. 13, p. 786. If females are to take as tenants in common the necessary variations will be found in Form No. 14, p. 787. See also Forms Nos. 15 and 16, p. 789.

(*c*) Where the testator has a son or sons living at the date of his Will omit Form No. 11, p. 785, and substitute the first part of Form No. 13, p. 786, as mentioned in the note to that Form. If the first tenant for life is to be given an inalienable life interest insert Form No. 10, p. 783.

PART III.

Trusts of Portions Term, Powers of Charging and provisions as to Releasing Charges and Surrendering Terms.

Trusts of portions term, powers of charging and provisions as to releasing charges and surrendering terms.

6. *Trusts of Portions Term—Form No.* 24, *p.* 800 ;(*d*) *or Trusts of term limited to provide for legacies and capital sums—Form No.* 25A, *p.* 805.

7. *Power for successive tenants for life to limit rentcharges—Form No.* 27, *p.* 806.

8. *Power for successive tenants for life to charge portions—Form No.* 28, *p.* 806.

9. *Power for females restrained from anticipation to release rentcharges—Form No.* 29, *p.* 806.

10. *Power for term trustees to surrender terms—Form No.* 30, *p.* 806.

PART IV.

Bequest, and Settlement of Heirlooms.

Bequest, and settlement of heirlooms.

11. *Bequest of heirlooms—Form No.* 31, *p.* 807.

PART V.

Bequest of Legacies and Residuary Personal Estate.

Bequest of legacies and residuary personal estate.

[12. *Bequests of legacies—See Forms in Wills* (*Personal*), *supra, Forms Nos.* 9–27B, *pp.* 674, *et seq. Any pecuniary legacies will be provided for by means of a term—See Forms No.* 9 *and* 25A, *pp.* 783 *and* 805. *Any annuities should be given by way of rentcharge—See Form No.* 6A, *p.* 782, *in the limitations of the land.*]

13. *Bequest of residuary personal estate upon trust for conversion and so as to devolve as capital money with the land devised in settlement—Form No.* 32, *p.* 809.

PART VI.

Provisions by way of Extension and Variation of the Settled Land Act.

S. L. Act extension clauses.

14. *Additional powers to be inserted in vesting instruments—Form No.* 36, *p.* 812.

15. *Interim investment of capital money—Form No.* 44, *Settlements* (*Real*), *p.* 290, *supra.*

(*Add here such forms under the above heading, see List of Forms in Settlements* (*Real*), *p.* 245, *supra, as may be required in each case.*)

(*d*) For provisions settling daughters' portions, see Form No. 25, p. 803.

PART VII.

Miscellaneous Provisions.

[15A. *Power to pay money in lieu of fire insurance premiums to trustees—Form No.* 37, *p.* 814.]

16. *Power to present to livings during minorities—Form No.* 38, *p.* 814.

17. *Power for professional trustee to charge—Form No.* 39, *p.* 814.

18. *To appropriate, &c.—Form No.* 40, *p.* 814.

19. *To act though personally interested—Form No.* 41, *p.* 815, *if required.*

20. *Indemnity to tenants for life and trustees—Form No.* 42, *p.* 815.

Power to appoint new trustees.

21. *Power to appoint new trustees—Form No.* 43, *p.* 815.

22. *Marginal notes—Form No.* 44, *p.* 815.

Testimonium and attestations.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

[*For Schedules see Forms Nos.* 45 *and* 46, *pp.* 815–16.]

No. II.

WILL (*executory*) *short form for same purposes as Precedent No.* I, *or other purposes, the whole property being given to Trustees* UPON TRUST *to settle the same in accordance with* INSTRUCTIONS *in a* SCHEDULE.(*e*)

Commencement of Will—Form No. 1, *p.* 778.

1. *Appointment of executors and trustees for the purposes of S. L. Act—Form No.* 3, *p.* 779.

[*Appoint guardians—Wills* (*Personal*), *Form No.* 4, *p.* 671; *and incorporate Statutory Forms, if required—Form No.* 3A, *p.* 780.]

General devise and bequest to Trustees on trust to give effect to instructions in schedule.

2. (i) I DEVISE AND BEQUEATH to my Trustees all the real and personal estate which I can dispose of by Will in any manner I think proper, either as beneficially entitled thereto, or under any general power [including the statutory power to dispose of entailed property] (except under [the statutory power to dispose of entailed property and except under] a power to which I am bound expressly to refer), UPON TRUST to give effect (as nearly as practicable) to the instructions contained in the Schedule to

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(*e*) See notes to Prec. II, Sect. II, Wills (Personal), p. 749, *supra*, as to the advantages of an executory Will. In this case it is provided that the settlement to be executed shall be prepared by counsel. More brevity is secured in the case of a Realty Will by means of an executory document than in the case of a Personalty Will, for the Statutory Forms do not give much assistance in the former case.

my Will in such manner as counsel may advise, and with or without such variations as circumstances may render expedient;

Power to execute settlements.

(ii) For the purposes aforesaid my Trustees may at their absolute discretion without being liable to account for the exercise of such discretion execute all such vesting and trust instruments by way of settlement (*f*) and dispositions as they may deem expedient;

Settlements to have effect in equity as from testator's death.

(iii) Any such settlements or dispositions may contain all such powers, directions, and provisions as my Trustees may consider necessary or expedient, and shall have effect in equity so far as may be required as from my death;

Settlements to be binding as if made under an Order of Court.

(iv) Any such settlements or dispositions executed by my Trustees shall be deemed to be proper and shall be binding on all persons interested under my Will as if the same had been executed pursuant to an Order of a Court of competent jurisdiction, and notwithstanding that the same may appear to vary the instructions in the Schedule to my Will;

Expert advice.

(v) My Trustees may act on expert advice, and shall not be liable for any mistake occurring in such advice.

IN WITNESS whereof I have hereunto set my hand the day and year first above written.

THE SCHEDULE.

Instructions.

1. GIVE rents in arrear, and my farming [and mining] live and dead stock, effects, and plant to person of full age who becomes entitled to rents and profits in usual way.

2. LIMITATIONS of land. All life interests to be without impeachment for waste; tenants for life to insure buildings [except farm buildings]:

(1) £—— rentcharge to my wife for her life [widowhood];

(2) Term to Trustees without impeachment of waste on trust to raise portions and legacies;

(3) Life interests to my first and every other son successively according to seniority, With remainder immediately after the life interest of each son to his first and other sons successively according to seniority in tail male;

(4) Life interests to my eldest and other brothers successively according to seniority, With remainder immediately after the

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(*f*) The settlement will not be subject to the heavy stamp duty imposed by Fin. (1909-10) Act, 1910, s. 74.

Stamp on settlement.

life interest of each brother to his first and other sons successively according to seniority in tail male ;

(5) Ultimate remainder to my own right heirs by purchase at time of failure of limitations.

3. INTERESTS of tenants in tail born in my lifetime to be cut down to life estates, With usual remainders over to their first and other sons successively according to seniority in tail male.

4. USUAL trusts of portions term for raising the aggregate sum of £—— with interest at 5 per cent. for my younger sons and my daughters, vesting as usual. Issue of a child dying in my lifetime leaving issue at my death to take their parent's portion. Usual provisions for advancement for the benefit of issue male, and maintenance for the benefit of any issue. Portions of females not to be raised and to sink for benefit of property charged unless they marry, but to carry interest until raised.

5. POWER for successive tenants for life to charge jointures and portions (£—— one child, £—— two children, £—— three or more children) and to limit portion terms. No rentcharge to exceed £—— per annum, and total rentcharges payable under this power exclusive of my wife's rentcharge not to exceed £—— per annum at any one time. Total portions raisable under the power not to exceed £——. No rentcharge or portion to become a lien unless the appointor becomes entitled to rents and profits, or his issue become, or if of full age would become, so entitled. Charges to have same priority as estates of appointors.

6. POWERS for females restrained from anticipation to release rentcharges and for term trustees to surrender terms.

7. THE following heirlooms to be settled so as to devolve with the freeholds. [*Add description of heirlooms.*]

8. SUBJECT to payment of funeral expenses, debts, &c., and the following legacies, namely :—(*add particulars*) my residuary personal estate to be settled as capital money to devolve with the land.

9. WIDE extension of the powers conferred by the Settled Land Act including interim investment clause:

Appoint my Trustees to be trustees for the purposes of that Act ;

Any family charges subsisting at my death to be re-limited.

10. ADDITIONAL powers and indemnity to trustees as required.

11. POWER for tenants for life of full age to appoint new trustees of Will and any settlement to be made pursuant thereto.(*g*)

12. COSTS to be paid primarily out of my personal estate.

Signed by the above-named A. B., &c. (*continue as in Form No.* 48, *p.* 816).

No. III.

WILL *settling* LAND, *and* RESIDUARY PERSONALTY *upon the Trusts of an existing* SETTLEMENT *of* REAL ESTATE.

Commencement of Will—Form No. 1, *p.* 778.

Commencement.

1. I APPOINT——, of, &c., and ——, of, &c. (hereinafter called my Trustees), to be the executors and trustees of my Will.(*h*)

Appointment of executors and trustees.

2. *Bequest of rents in arrear, &c.—Form No.* 4, *p.* 780.

3. *Devise and bequest of land upon trust to settle on the trusts of the Settlement—Form No.* 33, *p.* 810.

Devise and bequest on trust to settle to the uses of the settlement.

4. *Bequest of residuary personalty to the Will trustees upon trust after payment of debts, &c., to transfer balance to the trustees of the Settlement as capital money—Form No.* 35, *p.* 811.(*i*)

Bequest of residuary personalty.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

No. IIIA.

WILL *appointing* LAND, *and* CAPITAL MONEY *upon the Trusts of a* VOLUNTARY RE-SETTLEMENT *of Capital Money made by the Testator and his Son.*

Commencement of Will—Form No. 1, *p.* 778.

Commencement.

1. *Appointment of executors and trustees as in last Precedent.*

2. *Appointment of land and capital money on the trusts of re-settlement of capital money—Form No.* 34, *p.* 811.

3. *Bequests of legacies; see forms in Wills* (*Personal*)*—Forms Nos.* 9–27B, *pp.* 674, *et seq.*

4. *Residue to son absolutely—Form No.* 50, *Wills* (*Personal*), *p.* 709.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

(*g*) If a copy of this Precedent with the schedule in blank and an extra copy of the schedule for reference is at hand when instructions for the Will are taken, it should be possible for the Will to be prepared and executed at the same time.

Plan to be adopted if testator is *in extremis.*

(*h*) In this case, see Forms Nos. 33, p. 810, and 35, p. 811, the trustees of the settlement become the trustees of the Will for the purposes of the S. L. Act, 1925, see s. 32.

(*i*) If desired the powers in the settlement can be enlarged or varied as respects the property passing under the Will.

No. IV.

WILL *devising and bequeathing* LAND *and* HEIRLOOMS *in* STRICT SETTLEMENT *where the younger children are otherwise provided for, and existing family charges are re-limited. Limitation of* RESIDENCE *and a* RENTCHARGE *to* WIFE. NAME AND ARMS *clause.* CHARGE *of* DEBTS *in aid of personal Estate.* POWERS *to jointure and charge portions. Legacies.* RESIDUARY PERSONALTY *to first tenant for life or in tail who attains twenty-one.*

Commencement of Will—Form No. 1, *p.* 778.

1. *Appointment of executors and trustees for purposes of Settled Land Act—Form No.* 3, *p.* 779.

Effect of marriage settlement of real estate subsequently devised in settlement.

2. UNDER the Settlement made on my marriage, my B. Estate in the County of —— hereinafter devised (other than the mansion-house and pleasure-grounds hereinafter mentioned) stands limited after my death on trusts for securing to my Wife a jointure rentcharge of £—— a year, and subject thereto, UPON TRUST for trustees for a term of years upon the usual trusts for raising portions for the children and issue of such marriage (other than such first or only son or other son or sons as therein mentioned(*j*)) by which portions, [together with the benefits which such other children and their issue or some or one of them take under, &c.,] I consider them amply provided for.

3. *Bequest of rents in arrear—Form No.* 4, *p.* 780.

Freeholds.

4. *General devise of and bequest of land life interests to be without impeachment for waste, &c.—Form No.* 5, *p.* 781:

Limitations. (*k*)

(1) *Re-limitation of existing jointure and portions term—Settlements (Real), adapt Forms Nos.* 13 *and* 14, *pp.* 254–55 :

(2) *Limitation of residence to wife during widowhood, or until*

(*j*) *I.e.*, becoming entitled to the settled estate. It is assumed either that the testator is seised in fee of the B. Estate, or has a general testamentary power of appointment, which takes effect in equity.

Re-limitation of family charge.

(*k*) Seeing that whoever are the trustees of the compound settlement will be nominated to act as S. L. Act trustees of the Vesting Instrument: S. L. Act, 1925, s. 1, it is no longer essential to re-limit family charges subsisting under a previous settlement; still the practice may be conveniently continued to show in one instrument the order in which the limitations are to take effect and to enable the trusts of the prior documents to be closed. Under S. L. Act, 1925, s. 31 (as amended), the S. L. Act trustees (if any) of the prior settlement will be trustees of the compound settlement. If there are no S. L. Act trustees of the prior instrument, then the trustees of the instrument under which there is a tenant for life or statutory owner will be the S. L. Act trustees of the compound settlement until other trustees are appointed in their place.

Trustees of compound settlements.

she becomes entitled to a settled estate with an additional rentcharge issuing out of all the testator's real estate—Form No. 8, *p.* 783:

(3) UPON TRUST for my eldest son —— during his life, With remainder (*continue as in Form No.* 13, *p.* 786, *adding other limitations as required*).

5. *Clause cutting down estates of tenants in tail born in testator's lifetime to estates for life—Form No.* 20, *p.* 793.

6. *Name and arms clause—Form No.* 22, *p.* 795, *or No.* 22A, *p.* 797.

7. *Trusts of substituted portions term—Settlements (Real), adapt Form No.* 22, *p.* 264, *supra.*(*l*)

Powers of charging.

8. *Power if required for trustees to raise money for debts and legacies, in aid of personal estate—Form No.* 26, *p.* 805.

9. *Power for successive tenants for life,* "other than my wife," *to limit rentcharges—Form No.* 27, *p.* 806.

10. *Power for successive tenants for life,* "other than my wife," *to charge portions—Form No.* 28, *p.* 806.

11. (1) *Power for females restrained from anticipation to release rentcharges—Form No.* 29, *p.* 806:

(2) *Power for term trustees to surrender terms—Form No.* 30, *p.* 806.

12. *Settled Land Act extension provisions—Form No.* 36, *p.* 812; *see also Forms in Settlements (Real), pp.* 289, *et seq.*

Heirlooms.

13. I BEQUEATH free of duty to my Trustees all the furniture, plate, plated articles, [linen, china, glass,] books, pictures, prints, statues, sculptures, articles of vertu, [and other articles of household use or ornament (except consumable stores)] which shall at my death be in or about my said mansion-house of —— (except such chattels as shall at my death be in my said mansion-house for a temporary purpose only, but including all chattels usually kept therein or enjoyed therewith which may at my death be removed or deposited at my bankers or elsewhere (*m*)) (all of which chattels hereby bequeathed are hereinafter referred to as the heirlooms), UPON TRUST that my Trustees shall allow the same to be used and enjoyed by my wife so long as she shall be entitled to occupy my said mansion-house under the trust

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(*l*) The trusts of the substituted term will follow the trusts of the original term. The term will be limited to the same persons who have the original term, see last note.

Chattels deposited for safe custody.

(*m*) These words avoid questions arising as in *Re Earl of Stamford* (1905), 22 T. L. R. 632; *Re Dennis* (1907), 24 T. L. R. 499; and see Theobald, 7th ed., 168.

hereinbefore contained, And subject as aforesaid shall allow the heirlooms to devolve, &c. (*continue as in Form No.* 31, *p.* 807.)

Legacies.

14. *Legacies—see Forms Nos.* 9–34 *in Wills* (*Personal*), *pp.* 674, *et seq.*

Residuary personalty.

15. *Bequest of residuary personalty upon trust for conversion, payments of debts, legacies, &c., as in sub-clause* (1) *of Form No.* 32, *p.* 809.

Trust to invest.

(2) My Trustees shall invest the residue of the said money in or upon any of the investments (other than the purchase of land) hereby or by law authorised with respect to capital money with power to vary such investments for others of a like nature.

Power to apply income of residue for maintenance, &c.

(3) My Trustees shall pay or apply out of the income of the investments for the time being representing my residuary personal estate such sums as they shall think fit for or towards the maintenance, education, or benefit of the person for the time being entitled in immediate expectancy to my residuary personal estate under the trust hereinafter declared during his or her minority [and may during such minority pay such further sums as my Trustees shall think fit, not exceeding in each case the annual sum of £—— for or towards the maintenance, education or benefit of any child of mine (other than any child of mine for the time being so entitled in immediate expectancy) during his or her minority, and without regard to any other provision for him or her]; And my Trustees may either themselves pay or apply the sums hereby authorised to be paid or applied for the maintenance or benefit of any minor, or may pay the same to the guardians of such minor for the purpose aforesaid, without seeing to the application thereof; And subject to the trusts hereinbefore declared, my Trustees shall stand possessed of my residuary personal estate, and the investments for the time being representing the same, and the income and accumulations (if any) of the income thereof, or so much thereof respectively as shall not have been paid or applied under any of the trusts or powers affecting the same In trust for the first person (other than my wife) who becomes entitled to the possession or receipt of the rents and profits of the property hereinbefore devised for an interest for life or in tail male by purchase, and attains the age of twenty-one years.(*n*)

Residue for first tenant for life or in tail male who attains twenty-one.

(*n*) It is generally more convenient to give the residuary personalty as capital to devolve with the land, see Form No. 32, p. 809, and to give the eldest son, if required, a power to charge a capital sum for his own benefit.

16 and 17. *Add powers for professional trustees to charge and to appropriate—Forms Nos.* 39 *and* 40, *p.* 814, *with slight variations in regard to appropriation.*

18. *Power to appoint new trustees—Form No.* 43, *p.* 815, *saying, if desired,* My wife during her life and after her death, the person (if any) of full age, &c. (*continuing that form*).

In witness, &c.—*Form No.* 48, *p.* 816.

No. V.

WILL *devising* Two Estates *in* Strict Settlement *with* Shifting Clause.

Commencement of Will—Form No. 1, *p.* 778.

1. *Appointment of executors and trustees for purposes of Settled Land Act—Form No.* 3, *p.* 779.

2. *Bequest of rents in arrear, &c.—Form No.* 4, *p.* 780.

Devise of M. Estate.

3. I give all the manors or reputed manors of, &c., in the County of ——, and also my freehold messuage called ——, and all other the real estate and chattels real situated or arising in the Parishes of —— in the same County or in some or one of them, which I can at my death (*continue Form No.* 5, *p.* 781, *inserting the words* (all which properties are hereinafter referred to as "the M. Estate") *after the brackets*) to the persons who under the trusts hereinafter declared become entitled on or after my death to have vesting instruments made in their favour Upon the trusts (*continue as in Form No.* 5, *p.* 781, *to end of that form*), that is to say :

To second and younger sons and their issue.

Upon trust for my second son J. B. for his life, With remainder Upon trust for his first and other sons successively according to seniority in tail male, With remainder [*similar limitations to third and other living younger sons and their sons in tail male,* With remainder] Upon trust for all my sons hereafter to be born successively according to seniority for their respective lives, With remainder immediately after the interest for life of each such after-born son of mine, Upon trust for his first and other sons successively according to seniority in tail male, With remainder Upon trust for my eldest son W. B. for life, With remainder Upon trust for his first and other sons successively according to seniority in tail male, With remainder Upon the trusts, and subject to the powers and provisions hereinafter declared in remainder after the failure or determination of all interests for life or in tail male limited to my sons and their issue male respectively concerning the property forming the A. Estate hereinafter defined and devised in settlement:

PROVIDED that the powers to appoint rentcharges and to charge sums for portions for younger children hereinafter contained with respect to the A. Estate shall not apply to or enable any rentcharge or sum for portions for younger children to be charged on the M. Estate.

Devise of the A. Estate.

4. I DEVISE all the manors or reputed manors of, &c., in the County of ——, and the advowsons of, &c., in the same county, and the mansion-house known as A. Park, with the park, garden, and lands usually occupied therewith, and all other the messuages, farms, lands, rentcharges in lieu of tithes, real estate and chattels real situated or arising in the several Parishes of —— in the same County, and all other the manors, advowsons, messuages, lands, and property situated or arising in the same county which I can at my death (*continue Form No.* 5, *inserting the words* (all which properties lastly hereinbefore devised are hereinafter referred to as "the A. Estate") *after the brackets*), that is to say:—

Limitations in strict settlement.

UPON TRUST for my eldest son, the said W. B., for his life (*continue Form No.* 13, *p.* 786, *saying* hereinbefore limited in the A. Estate).

Clause cutting down estates of tenants in tail born in testator's lifetime to estates for life.

5. *Clause cutting down estates of tenants in tail born in the testator's lifetime to estates for life—Form No.* 20, *p.* 793, *adapting it so as to apply to both the M. and A. Estates.*

Powers of charging.

6. *Power for successive tenants for life of both estates to charge rentcharges to wives and husbands—Form No.* 27, p. 806.

7. *Power for successive tenants for life of both estates to charge portions—Form No.* 28, *p.* 806, *saying after the word* "indefeasibly," "except by the operation of the shifting provisions hereinafter contained."

Shifting clause.(*o*)

8. (1) PROVIDED that in case the said J. B., or any of his issue male, or any other younger son of mine, or any issue male of any such other younger son shall, or if of full age (*p*) would, under the limitations hereinbefore contained of the A. Estate, [or otherwise,] become entitled to the actual possession or receipt of the rents and profits of the same estate, [or of the greater part thereof, and whether subject or not to incumbrances,] and any

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(*o*) See Theobald, 7th ed., 716–19, as to the effect of this provision. For the effect of a bar of the entail in the A. Estate, see also *The Law, &c., Co.* v. *Hill* [1902], A. C. 263; 71 L. J. Ch. 602; for a method for defeating a shifting clause: *Re Hinckes* [1921], 1 Ch. 475; 90 L. J. Ch. 338.

(*p*) See *Leslie* v. *Rothes* [1894], 2 Ch. 499; 63 L. J. Ch. 617.

other son of mine, or any issue male of any other son of mine, shall be then living, then and so often as the same shall happen all such of the interests for life or in tail male in the M. Estate hereinbefore limited to a younger son of mine, or to the issue male of a younger son of mine, who or any of whose issue male shall or would so become entitled to the A. Estate as aforesaid, as shall be then subsisting or capable of taking effect, and in the case of a person whose interest for life is hereby made to cease all powers annexed to such life interest and every jointure and every portion (not already absolutely vested) previously appointed or charged by such person, shall absolutely cease and become void as if the younger son who or any of whose issue male shall or would so become entitled to the A. Estate as aforesaid were then dead without ever having had any issue male and such jointure or portion had not been appointed or charged:

(2) AND from and after such cesser the M. Estate shall be held, Upon the trusts, and subject to the powers and provisions hereinbefore contained in remainder after the failure or determination of all interests for life or in tail male hereby limited, to the son or to the issue male of the son who or any of whose issue male shall or would so become entitled to the A. Estate as aforesaid:

Reverter clause.

(3) PROVIDED that if subsequently to any such cesser as aforesaid the M. Estate would but for this present proviso be held, Upon the trusts, and subject to the powers and provisions hereinbefore contained in remainder after the failure or determination of all interests for life or in tail male hereby limited to my sons and their issue male respectively, then the M. Estate shall be held, Upon the trusts, and subject to the powers and provisions, to, upon, and subject to which the same Estate would have stood limited if the proviso for shifting estates hereinbefore contained had been omitted from my Will, but not so as to revive or restore any jointures or portions previously made void by the operation of such last-mentioned proviso.

(4) As and when any interest is made to shift under the provisions of this clause all necessary vesting instruments shall be executed pursuant to section seven of the Settled Land Act, 1925, which are consequential on the change of ownership.

Accumulations.(q) Maintenance.

9. AN infant taking by purchase shall not become absolutely

(q) T. Act, 1925, s. 31, can be varied by a testator or settlor: *ib.*, s. 69 (2); if the testator deprives an infant of income, the section cannot apply.

entitled to accumulations under section thirty-one of the Trustee Act, 1925, if the interest of the infant shall during the minority and [in the case of a female] before marriage determine under the proviso for shifting interests hereinbefore contained but in that case paragraph (ii) of sub-section (2) of the said section shall apply to the accumulations attributable to the life or entailed interest.

Legacies.

10. *Bequest of legacies—see Forms in Wills (Personal), Nos.* 9–27B, *pp.* 674, *et seq.*

Residuary personal estate to devolve as capital money with A. Estate.

11. *Bequest of personal estate upon trust for conversion, payment of debts, legacies, &c., and so as to devolve with the A. Estate —Form No.* 32, *p.* 809, *saying in sub-clause* (2) "from the A. Estate hereinbefore devised in Settlement."

S. L. Act extension clauses.

12. *Additional powers—Form No.* 36, *p.* 812. *See also Forms in Settlements (Real), pp.* 289, *et seq.*

Powers of trustees, &c.

13. *Power for professional trustees to charge—Form No.* 39, *p.* 814.

14. *Power to appropriate, &c.—Form No.* 40, *p.* 814.

15. *General wide indemnity to tenant for life and trustees—Form No.* 42, *p.* 815.

Power to appoint new trustees.

16. *Power to appoint new trustees—Form No.* 43, *p.* 815..

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

NO. VI.

WILL *appointing* JOINTURE *and charging* PORTIONS *under powers in a* REALTY SETTLEMENT *by a tenant for life in* POSSESSION.(*r*) *Variation where the life estate is in* REMAINDER. *Legacy to child who becomes entitled under Realty Settlement. Residue to other children.*

Commencement of Will—Form No. 1, *p.* 778.

Appointment of executors and trustees.

1. (1) I APPOINT C. D., of, &c., and E. F., of, &c. (hereinafter called my Trustees), to be the executors and trustees of my Will:

Personal representatives become S. L. Act trustees.

(*r*) The terms of the power must be carefully followed in each case. The mere appointment of executors, no S. L. Act trustees being expressly appointed, will, where a settlement is created, operate to constitute them S. L. Act trustees: S. L. Act, 1925, s. 30 (3). In this Precedent no settlement is created, the charges created by the exercise of the special powers are read into the instrument conferring the powers.

Rentcharge charged on other rentcharges.

A jointure can be charged on other rentcharges, *e.g.*, where the settled land consists of perpetual rentcharges: L. P. Act, 1925, s. 122.

Appointment of special executors.

(2) *Executors of land of which the testator is tenant for life—Form No.* 3 (2), *p.* 779.

Appointment of jointure.

2. In exercise of the power for this purpose conferred on me by a Deed (hereinafter called the Settlement) dated the —— day of —— and made between, &c., and of all other powers I appoint to my wife Jane B., in case she survives me, during the residue of her life, a yearly rentcharge of £——, by way of jointure to be issuing out of or to be charged on all the property (except advowsons) which at my death shall be subject to the subsisting limitations of the Settlement and to commence from my death and to be considered as accruing from day to day, but to be paid without any deductions (except income tax) by equal half-yearly payments, the first payment thereof to be made at the end of six months from my death if my wife shall then be living.

Charge of portions and appointment of term.(*s*)

3. In exercise of the power for this purpose also conferred on me by the Settlement and of all other powers :—

(1) I appoint that all the property (except advowsons) which at my death shall be subject to the subsisting limitations of the Settlement (but subject and without prejudice to the jointure rentcharge hereinbefore limited and the remedies for recovery thereof) shall be held, In trust for my Trustees for the term of 1,000 years to commence from my death without impeachment of waste, Upon trust that my Trustees shall if there shall be any child or children of mine living at my death who attain the age of twenty-one years or being female marry under that age (other than and besides a first or only son or any other son or sons [or any daughter or daughters] who before attaining the age of twenty-one years [or being female marry under that age] shall or would if of full age be or become [indefeasibly] entitled under the limitations of the Settlement to the possession of or to a freehold interest in the lands thereby settled) then by mortgage or sale or demise of the property or any part thereof (*continue and adapt Form No.* 22, *Settlements* (*Real*), *p.* 264, *supra, omitting the power of appointment*).

[Variation where testator is tenant for life in remainder.]
(*t*)

[4. Provided that the rentcharge portions and term hereby charged and appointed shall not become a lien upon the property subject to the limitations of the Settlement or any part thereof,

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(*s*) See Form No. 22, Settlements (Real), p. 264, *supra*, and notes thereto, particularly with regard to the words in square brackets.

(*t*) This clause must also follow the terms of the power.

or be payable unless and until I shall at my death be entitled to the possession or to the receipt of the rents, profits or income of the property subject to the limitations of the Settlement or some issue of mine shall or if of full age would be so entitled.]

Legacy to child who becomes entitled in possession under the settlement.(u)

5. I BEQUEATH the sum of £—— free of duty to the son [or daughter] of mine of full age who shall at my death become entitled to the possession or to the receipt of the rents, profits or income of the property subject to the limitations of the Settlement.

Residue to other children.

6. (1) *General devise and bequest on the administration trusts —Wills (Personal), Form No.* 46, *p.* 704:

(2) *Definition of Trust Fund—Wills (Personal), Form No.* 49, *p.* 708 (*and continue*):

IN TRUST for all or any my children or child living at my death (other than a child who shall become entitled as aforesaid under the limitations of the Settlement) who attain the age of twenty-one years or being female marry under that age, and if more than one in equal shares.

[*Add further provisions, see Forms in Wills (Personal), as required. As the residuary legatees are to take in undivided shares the residuary real estate and chattels real must be held on trust for sale under the "administration trusts" referred to in Form No.* 46 *by reference to Form* 8 *of the Statutory Will Forms*, 1925.]

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

No. VII.

WILL *appointing* PORTIONS *already charged.* LEGACIES *to Eldest and Younger Sons.* SETTLED LEGACIES *to Daughters.* DAUGHTERS *bound to settle portions or forfeit legacies. Residue to go as capital money under* REALTY SETTLEMENT.

Commencement of Will—Form No. 1, *p.* 778.

Appointment of executors and trustees.

1. (1) I APPOINT C. D., of, &c., and E. F., of, &c. (hereinafter called my Trustees), to be the executors and trustees of my Will:

Special executors.

(2) *Executors of land of which the testator is tenant for life— Form No.* 3 (2), *p.* 779.

(u) It is assumed that the legatee is of age.

Appointment of portions charged under an existing term to surviving daughters equally.(*v*)

2. In exercise of the power for this purpose conferred on me by a Settlement dated the —— day of ——, and made, &c., and of all other powers, I appoint that the trustees for the time being of the term of —— years thereby limited for raising portions for my younger children and their issue, shall stand possessed of the sum which shall be raisable under the trusts thereof at my death In trust for such of my daughters as shall survive me and attain the age of twenty-one years or marry under that age, and if more than one in equal shares, and so that each married daughter shall, notwithstanding her minority, have power to give a valid receipt for her portion.

Legacies to eldest and younger sons.(*w*)

3. (1) I bequeath the sum of £—— to the son of mine who shall at my death be of full age and become entitled to the possession or to the rents, profits or income of the property subject to the limitations of the said Settlement, and the sum of £—— to each of my other sons who survives me and attains the age of twenty-one years:

(2) Each legacy shall be set aside and invested by my Trustees until the legacy vests and shall carry interest at the rate of £5 per cent. per annum from my death till invested or appropriated.

Settled legacies to daughters.

4. I bequeath to my Trustees for each of my daughters and her issue (*continue as in Form No.* 24, *Wills* (*Personal*), *p.* 684).

Directions to daughters to settle portions upon similar trusts to the settled legacies.

5. Each of my daughters shall, to the satisfaction of my Trustees, settle the portion hereinbefore appointed to her Upon trusts corresponding with the trusts hereinbefore (by reference to the Statutory Will Forms) declared concerning the legacy hereby bequeathed for the benefit of her and her issue; and if any daughter of mine shall make default in giving effect to such direction within six months after my death or within such extended period as my Trustees shall at their absolute discretion permit, the legacy so bequeathed shall lapse as if such daughter had died in my lifetime without ever having been married; but this provision shall not extend to any daughter who by virtue of a covenant to settle after-acquired property is liable to settle her portion on the trusts of her marriage settlement.

(*v*) If a daughter dies in testator's lifetime, leaving issue, the testator can, if the power permits, provide for the issue by his Will or a codicil.

(*w*) It is assumed that the son who takes the estates will be of age. As to appointing trustees of an infant's legacy instead of paying it into court: Ad. of E. Act, 1925, s. 42. Where executors have before 1926 set aside a legacy for an infant, this section protects them.

Legacies duty free.

6. ALL legacies hereby bequeathed shall be paid free of duty.

Gift of residue after payment of debts, &c., so as to devolve with the land comprised in the settlement.

7. I DEVISE AND BEQUEATH to my Trustees (*continue and adapt Form No.* 35, *p.* 811; *extending it to real estate and add such further forms as the circumstances require*).

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

No. VIII.

WILL *devising* LAND *in* STRICT SETTLEMENT *with a trust for* ACCUMULATION *for discharge of* INCUMBRANCES *subject to providing an annuity for the tenant for life.*(x)

Commencement of Will—Form No. 1, *p.* 778.

Executors, &c.

1. *Appointment of executors and trustees for purposes of S. L. Act—Form No.* 3, *p.* 779.

Rents in arrear.

2. *Bequest of rents in arrear—Form No.* 4, *p.* 780.

Limitations.

3. *General devise of land—Form No.* 5, *p.* 781:

Term to pay off incumbrances, &c.

(1) UPON TRUST for my Trustees for the term of 1,000 years without impeachment of waste Upon the trusts hereinafter declared concerning the same, AND subject thereto:

Limitations to issue male.

(2) *Limitations to testator's first and other sons successively for*

(x) It is assumed in this Precedent that the testator's younger children are otherwise provided for.

Right of tenant for life to legal estate in the settled land.

The trustees, though entitled to possession in right of the 1,000 years term, will not have the legal estate in the settled land. That will, by a vesting assent, be vested in the tenant for life of full age; he must give effect to the rights of the trustees of the term: S. L. Act, 1925, s. 16; the testator cannot (except as noted below) deprive him of his right to have the settled land vested in him: *ib.*, s. 106 (1) (a). The term only creates a family charge: *ib.*, s. 1 (1) (v); the tenant for life remains such, notwithstanding the prior trust for accumulation: *ib.*, s. 20 (1) (vi). If it is not desired that the legal estate in the land should be vested in a tenant for life, the mode to effect this is either to devise the land on trust for sale or to avoid creating a tenant for life, *e.g.*, by means of a discretionary trust, or by following the scheme adopted in *Re Frewen* [1926], 1 Ch. 580. A trust for sale can be properly employed in the case of small estates, but where the estate is large the duties imposed on the trustees would generally be too heavy to get trustees to accept the trust, even though they have power (L. P. Act, 1925, s. 29) to delegate the powers of leasing and accepting surrenders of leases, though the power to delegate may be extended.

Means of preventing tenant for life from taking legal estate.

Over-reaching of legal terms.

If a legal term is, by mistake, limited or reserved to the trustees by a vesting instrument, in priority to the legal estate vested in the tenant for life, he will nevertheless be able to over-reach it, save where a legal mortgage has been created to secure money actually raised: S. L. Act, 1925, s. 72. In settlements *inter vivos* no provision is made authorising a legal term to be created: *ib.*, s. 4; in the case of a Will, a legal term cannot be created; it only operates in equity to create a "trust instrument": *ib.*, s. 6; L. P. (Amend.) Act, 1924, 9th Sch., para. 3. Legal terms created by a settlement before 1926 are got in by the vesting deed: S. L. Act, 1925, 2nd Sch., para. 1 (6) (as amended), without prejudice to mortgages.

Legal terms cannot be created by settlement or Will.

life, With remainder to their issue successively in tail male—Form No. 11, *p.* 785, *including the words in square brackets :*

(3) *Ultimate remainder—Form No.* 19, *p.* 792.

4. *Clause cutting down estates of tenant in tail born in testator's lifetime to interests for life if required —Form No.* 20, *p.* 793.

Clause cutting down estates tail.

5. *Trusts of* 1,000 *years term to accumulate rents and profits for paying off incumbrances subject to payment of an annuity to person entitled to possession, subject to the term—Form No.* 23, *p.* 798. *See notes to this Form as to rights of tenant for life.*

Trusts of term to pay off incumbrances, and annuity to person entitled to possession subject to term.

6. *Bequest of personal estate upon trusts for conversion and so as to devolve with the settled land as capital money—Form No.* 32, *p.* 809.

Personal estate.

7. *Additional powers—Form No.* 36, *p.* 812; *see also Forms in Settlements (Real), p.* 289, *supra.*

S. L. Act extension clauses.

8. *Power for professional trustees to charge—Form No.* 39, *p.* 814.

9. *Power to appropriate, if required—Form No.* 40, *p.* 814.

Powers of trustees.

10. *Indemnity clause—Form No.* 42, *p.* 815.

11. *Power to appoint new trustees—Form No.* 43, *p.* 815.

New trustees.

12. *Marginal notes—Form No.* 44, *p.* 815.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

No. IX.

WILL *of a* WIDOWER *giving an infant* SON *who is the only child a* GENERAL POWER *of* APPOINTMENT *on attaining full age and subject thereto in* STRICT SETTLEMENT, *daughters of son taking (subject to trust for sale) as* TENANTS IN COMMON *in tail.*

Commencement of Will—Form No. 1, *p.* 778.

Commencement.

1. *Appointment of executors and trustees for the purposes of the S. L. Act—Form No.* 3, *p.* 779.

Executors and trustees.

2. *General devise of lands—Form No.* 5, *p.* 781. *General power of appointment for son, With remainder to him for life, With remainder to his sons successively in tail male and in tail general, With remainder to his daughters as tenants in common in tail, With cross-remainders between them, With an ultimate remainder to the testator's brother in fee simple—Form No.* 17, *p.* 790.

Devise and limitations of land.

3. *Clause cutting down estates of tenants in tail born in testator's lifetime to life interests—Form No.* 20, *p.* 793.

Clause cutting down estates in tail.

S. L. Act extension clauses.

4. *Additional Powers—Form No.* 36, *p.* 812, *and see Forms in Settlements (Real), p.* 289, *supra.*

Personal estate made to devolve as capital money.

5. *Bequest of personal estate upon trust for conversion and so as to devolve with the settled land as capital money—Form No.* 32, *p.* 809.

Powers of trustees.

6. *Power for statutory owners to present to livings during minorities, if required—Form No.* 38, *p.* 814.

7. *Power for professional trustees to charge—Form No.* 39, *p.* 814.

8. *Power for trustee who is personally interested* (*e.g.*, *the testator's brother*) *to act—Form No.* 41, *p.* 815.

9. *Indemnity to tenant for life and trustees—Form No.* 42, *p.* 815.

New trustees.

10. *Power to appoint new trustees—Form No.* 43, *p.* 815.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.(*y*)

Equitable interests only created by Wills.

Abstract thereof not required.

(*y*) As a Will can only operate in equity: L. P. (Amend.) Act, 1924, 9th Sch., para 3; Ad. of E. Act, 1925, ss. 1–3, and for purposes of settlements is treated as a trust instrument: S. L. Act, 1925, ss. 6 and 9, it follows that where the Will comes into operation after 1925, no abstract thereof should be furnished when the title to a legal estate is to be investigated; the purchaser will only be concerned with the probate and the assent by the personal representatives.

PART III.

(PRECEDENTS) CODICILS (REAL).

No. I.

CODICIL *appointing an* EXECUTOR *and a* NEW TRUSTEE *of a* WILL *for the purposes of the* SETTLED LAND ACT—*also extending* SETTLED LAND ACT *powers.*

Commencement of codicil.

I, A. B., of, &c., declare this to be a first [*or* second, &c.] codicil which I make this —— day of ——, 19—, to my Will which is dated the —— day of ——.

Appointment of new executor and trustee in place of a deceased trustee.(*a*)

1. (1) I APPOINT X. Y., of, &c., to be an executor and trustee of my Will [and also a guardian of my infant children], in the place of C. D., who has died since the date of my Will, for all the purposes for which the said C. D. was appointed an executor and trustee thereof, and to act jointly with the other executors and trustees of my Will [and I bequeath to him, if he accepts the office of trustee and executor, the sum of £——]:

(2) MY Will shall be read and have effect as if the name of the said X. Y. had been inserted therein in the place of the said C. D. wherever his name occurs, and as if the said X. Y. had been originally appointed an executor and trustee of my Will for the purposes of the Settled Land Act, 1925, [and a guardian of my infant children] in the place of the said C.D.:

(3) I APPOINT the respective persons who at my death shall be the trustees for the purposes of the Settled Land Act, 1925, of any settlement under which I am tenant for life or statutory owner, to be my special executors in regard to the settled land vested in me at my death under the settlement.

Extension of S. L. Act powers.

2. *Additional powers—Form No.* 36, *p.* 812; *see also Settlements* (*Real*), *pp.* 289, *et seq.*

Confirmation of Will [and other codicils].

3. SUBJECT as aforesaid I confirm my Will [except so far as it is revoked or varied by my First [*or* Second, &c.] codicil; and I confirm that [and my other] codicil[s]].

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

(*a*) See Precedents of Codicils (Personal), pp. 771, *et seq.*, for appointments of new executors and trustees where the original appointment is revoked or where additional executors and trustees are added. It is assumed that

No. II.

CODICIL *increasing amounts charged as* JOINTURE *and* PORTIONS.

Commencement of codicil—Form No. 2, *p.* 778.

Increase of jointure rent-charge.

1. MY Will shall be read and have effect as if the yearly rentcharge of £——, thereby limited to my wife if she survives me, had been a yearly rentcharge of £—— in lieu of the said rentcharge of £——.

Increase of portions.

2. MY Will shall be read and have effect as if the amounts raisable as portions for my younger children and their issue under the trusts of the term of —— years thereby limited had been The sum of £—— if there shall be only one such child as therein defined, The sum of £—— if there shall be two or more such children and no more, And the sum of £—— if there shall be three or more such children in lieu of the amounts of £——, £——, and £—— therein mentioned.

3. SUBJECT as aforesaid—*Form No.* 47, *p.* 816.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

No. III.

CODICIL *providing for land only to bear its own incumbrances.*(*b*)

Commencement of codicil—Form No. 2, *p.* 778.

Legacies to be free from incumbrances.

1. NOTWITHSTANDING anything to the contrary contained in section thirty-five of the Administration of Estates Act, 1925, all specific legacies bequeathed by my Will (not being legacies of chattels real) shall take effect free from any incumbrances affecting the same at my death which shall be discharged primarily out of my residuary personal estate in exoneration of the legacy affected.

Clause adding omitted provisions.

2. THE following provisions shall be deemed to be inserted in my Will, which shall have effect accordingly :—

(*Add here any provisions omitted.*)

3. SUBJECT as aforesaid—*Form No.* 47, *p.* 816.

IN WITNESS, &c.—*Form No.* 48, *p.* 816.

Executors become S. L. Act Trustees.

S. L. Act trustees were appointed by the Will, see Form No. 3, p. 779; if there was no express appointment, the executors would become S. L. Act trustees: S. L. Act, 1925, s. 30 (3). As to special executors of land settled previously to the death: Ad. of E. Act, 1925, s. 22.

(*b*) Ad. of E. Act, 1925, s. 35, applies to incumbrances affecting property generally, *e.g.*, a mortgage of a policy.

DIVISION VII.

ASSENTS AND ADMINISTRATION INSTRUMENTS.

No. I.

NOTICE *by* PERSONAL REPRESENTATIVES *to the* CREDITORS *of a* TESTATOR *or* INTESTATE *to send in particulars of claims.*(a)

X.Y., deceased.—Pursuant to the Trustee Act, 1925, s. 27 (as amended), NOTICE is hereby given :—

1. THAT all creditors and persons having any claims upon or against the estate of X.Y., late of ——, in the county of ——, deceased (who died on the —— day of ——, and whose Will was proved by A. B., of ——, and C. D., of ——, the executors therein named, on the —— day of ——, in the Principal Probate Registry) [*or* who died intestate on the —— of ——, 19—, and to whose estate Letters of Administration were on the —— day of ——, 19—, granted to A. B., of, &c., and C. D., of, &c., by the —— District Probate Registry] are hereby required to send

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(*a*) T. Act, 1925, s. 27, as amended by L. P. (Amend.) Act, 1926, Sch., now reads : " With a view, &c. . . . may give notice by advertisement in the 'Gazette' and in a newspaper circulating in the district in which the land is situated, and such other . . ." Thus it is no longer essential to give notice in a daily London newspaper. It must, however, in the case of land, be given in a local paper which has a circulation in the district, not a mere paper of record not usually taken by solicitors and other residents.

Advertisement by personal representatives, trustees for sale and S. L. Act trustees.

The time fixed in the last advertisement for distribution must not be less than two months. Advantage can be taken of this section by trustees holding land on trust for sale and by S. L. Act trustees as well as by personal representatives.

Time for distribution.

Though advertisements are given, this does not free the personal representatives or trustees from any obligation to search or obtain official certificates of search against the deceased, but in most cases the representatives will be aware of the facts. They must see that they are making over the property to the right person.

Searches.

As to a purchaser obtaining a good title, notwithstanding a general charge, if the representatives have advertised for claimants : *Re Cary & Lott* [1901], 2 Ch. 463 ; 70 L. J. Ch. 653.

Protection of purchaser.

in particulars of their claims to the undersigned, the solicitors of the said executors [administrators] on or before the —— day of ——, 19—.

2. That after that day the said executors [administrators] will proceed to convey and distribute the assets of the deceased to or among the persons entitled thereto, having regard only to the claims of which the said executors [administrators] shall then have had notice, and that they will not be liable for the assets or any part thereof so conveyed or distributed to any person of whose claim they shall not then have had notice.

Dated this —— day of ——, 19—.

M. N. and O. P. (*solicitors for the executors* [*administrators*]).

No. II.

NOTICE *by* Trustees *for* Sale [S. L. Act Trustees] *to* Claimants *to send in particulars of* Claims.

Re the Marriage Settlement dated ——, 19—, of the late Mr. and Mrs. —— (settling land at ——) [*or* Re the Resettlement dated ——, 19—, made by the late —— and his son ——, affecting land in the counties of ——, *or otherwise shortly describe the Will or other trust instrument*].

Pursuant to the Trustee Act, 1925, s. 27 (as amended), Notice is hereby given :—

1. That all persons having any claims in respect of any interest in the property subject to the trusts of the above-mentioned instrument whereof A. B., of, &c., and C. D., of, &c., are the present trustees for sale [*or* Settled Land Act trustees] are hereby required to send in particulars of their claims to the undersigned, the solicitors of the said trustees, on or before the —— day of ——, 19—.

2. That after that day the said trustees will proceed to convey and distribute the trust property to or among the persons entitled thereto, having regard only to the claims of which the said trustees shall then have had notice, and that they will not be liable for any part of the trust property so conveyed or distributed to any person of whose claim they shall not then have had notice. Dated this —— day of ——, 19—.

N. M. and O. P. (*solicitors for the Trustees*).

No. III.

ASSENT *by* PERSONAL REPRESENTATIVES *in favour of a person* SOLELY *and* ABSOLUTELY *entitled to the* LAND (*freeholds, enfranchised lands and leaseholds*), *free from* FAMILY CHARGES,(*b*) [*but subject to Mortgages*] *whether so entitled under a* WILL, *an* INTESTACY, *a* CONVEYANCE *by a beneficiary, or an* APPROPRIATION.(*c*) (*Legal Estate.*)

Parties.

THIS ASSENT is made the —— day of ——, 19—, BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one part, and E. F., of, &c. (hereinafter called the Beneciary), of the other part: WHEREAS :—

Death and probate.

(1) R. F., being at his death entitled to the property mentioned in the —— Schedule hereto [subject to the legal incumbrances mentioned in the —— Schedule hereto but otherwise] free from incumbrances died on the ——, 19—, having by his Will dated ——, 19—, appointed the Grantors to be his executors, who on the ——, 19—, duly proved the same [with —— codicils

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Family charges.

(*b*) If there are family charges subsisting, this creates a settlement: S. L. Act, 1925, s. 1 (1) (v), and the assent must take the form of a vesting assent giving the names of the S. L. Act trustees: *ib.*, ss. 5, 6, 8. If there are two or more beneficiaries and the land is not settled land, the assent must be made to them on trust for sale.

Simple form.

A simple form of assent (see next Precedent) is given in L. P. Act, 1925, 5th Sch., Form No. 8, see notes to that form. It will relate back to the death unless a contrary intention appears, and can be properly given, though duties remain to be paid if the personal representatives are satisfied as to the arrangements made for payment.

Stamp. Memorandum Parchment.

Assents are (subject to the express provisions in the S. L. Act, 1925, relating to vesting assents) governed by Ad. of E. Act, 1925, s. 36; no stamp duty is payable unless they are executed under seal, when a 10*s.* stamp will be required. A memorandum of an assent must be placed on the Probate or Letters of Administration. An assent is a new form of conveyance, and should preferably be executed on parchment. It is an essential part of the title to a legal estate.

Appropriation deeds stamp.

As to stamping a conveyance for giving effect to an appropriation made under a power which is only exercisable with the consent of persons interested (*e.g.*, Ad. of E. Act, 1925, s. 41), as a conveyance on sale, see *Re Beverly* [1901], 1 Ch. 681; accordingly it is always desirable (see Statutory Will Forms, 1925, Form 6) to vary the statutory power so as to make it exercisable at the discretion of the representatives or trustees without any consent, see *Re Wragg* [1919], 2 Ch. 58; 88 L. J. Ch. 269. This, however, cannot be done where a person dies intestate.

It is assumed in this Precedent that any stamp duty attributable to an appropriation or to a conveyance by a beneficiary of his equitable interest to a purchaser has been discharged.

(*c*) For the power to appropriate: Ad. of E. Act, 1925, s. 41.

thereto which did not affect the appointment of executors] at the —— Probate Registry :

[Death intestate.]

[*or* died intestate on the ——, 19—, and on the —— day of ——, 19—, Letters of Administration to his estate were granted by the —— Probate Registry to the Grantors :]

Title of beneficiary.

(2) The Beneficiary having become entitled (*d*) to the said property [subject only to the aforesaid incumbrances] and having made arrangements for the payment of all death duties (if any) remaining undischarged and affecting the said property to the satisfaction of the Grantors [*or* and having discharged all death duties affecting the said property], has requested the Grantors to execute such assent as is hereinafter contained, which they have agreed to do in manner hereinafter appearing : NOW IT IS HEREBY DECLARED as follows :—

1. THE Grantors, As Personal Representatives of the said testator [intestate] hereby assent to the vesting in the Beneficiary of :—

Freeholds.

[First] ALL THOSE freehold properties [rentcharges] and rights situated or arising in the parishes of ——, in the county of ——, and more particularly described in the [First Part of the First] Schedule hereto, and in the case of lands delineated on the plan[s] hereto and thereon edged pink [Together with the lands and rights included in the fee farm grants mentioned in that Schedule] :

Enfranchised lands.

[Secondly] ALL THOSE enfranchised lands situated in the parishes of ——, in the county of ——, and more particularly described in the [Second Part of the First] Schedule hereto and delineated on the plan[s] hereto and thereon edged green :

Leaseholds.

[And thirdly] ALL THOSE leasehold properties mentioned in the [Third Part of the First] Schedule hereto and all the premises comprised in and demised by the Leases therein mentioned :

AND all other (if any) the properties and rights which ought to be vested by this Assent :

AS to the freehold properties (including enfranchised lands), for an estate in fee simple, [But as to the said enfranchised lands (*e*), subject to the manorial incidents and rights of the

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Recitals of equitable interests.

Assents when applicable.

(*d*) The personal representatives will require the beneficiary to satisfy them as to his title, but it is not generally expedient to recite the equitable title. Assents by personal representatives are available to transfer a legal estate for all purposes, save dispositions by them for money or money's worth. Equity follows the law, and though the statutory provisions are confined to legal estates, assents, similar in form, should be used for equitable interests.

Endorsement by steward.

(*e*) Where the land is affected by manorial incidents the assent must be produced to the steward for endorsement within six months and the fines and lords of the manors remaining unextinguished] and as to the leasehold properties for the residue of the respective terms for which the same are held and at the rents and subject to the lessees' covenants and conditions affecting the same :

[AND as to such of the premises as are affected thereby, subject to the incumbrances mentioned in the Second Schedule hereto.(*f*)]

Indemnity.(*g*)

2. AND the Beneficiary hereby agrees [covenants] with the Grantors that the Beneficiary and the persons deriving title under him will at all times as from the death of the said testator [intestate]—

(1) Pay all the rents respectively reserved by the said leases [and the fee farm grants mentioned in Clause five of the First Schedule hereto] :

[(2) Pay the mortgage debts mentioned in the Second Schedule hereto and keep down the interest thereon [and all death duties payable on the death of the said testator [intestate] in respect of the premises and remaining undischarged, and the interest (if any) thereon] :

(3) Observe and perform all the lessees' covenants and conditions respectively contained in the said leases [and all the grantees' covenants and conditions respectively contained in the said fee farm grants, and also all the mortgagees' covenants and conditions respectively contained in the mortgages mentioned in the Second Schedule hereto] :

(4) Save harmless and keep indemnified the Grantors and their respective estates and effects and the estate and effects of the said testator [intestate] from and against all proceedings, costs, claims and demands which they or any of them may

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fees paid: L. P. Act, 1922, s. 129. It will generally save expense if a compensation agreement is entered into by the personal representatives, before the assent is made, at the expense of the beneficiary, but the fines and fees must be paid up to date.

Assents subject to legal estate.

(*f*) Assents can properly be made (Ad. of E. Act, 1925, s. 36 (10)) subject to legal estates (*e.g.*, legal mortgages or legal rentcharges), but not subject to over-reachable equitable interests ; in the latter case there will be a trust to give effect to them. If the land is held on trust for sale, a trust will be imposed on the proceeds of sale and the rents until sale. In some cases a legal mortgage should be made by the representatives before the assent is given : S. L. Act, 1925, s. 16 (1) (ii) ; L. P Act, 1925, s. 3 (1) (c).

Indemnity stamp. Death duties.

(*g*) If there is an agreement for an indemnity, the assent should be executed over a 6*d*. stamp ; if it is executed under seal the stamp will be 10*s*. As to the right of the personal representatives to be indemnified against death duties: Ad. of E. Act, 1925, s. 36 (10 .

incur or pay on account of any omission to pay the said rents [rentcharges, mortgage debts, interest, and death duties], or of any breach of any of the said covenants and conditions.

AS [IN] WITNESS, &c.

THE [FIRST] SCHEDULE.

First Part.

Freehold interests.

1. ALL THAT the manor or lordship or reputed manor or lordship of ——, in the county of —— :

2. ALL THAT advowson (*h*) or perpetual right of presentation of and to the Rectory [Vicarage] and Church of Saint ——, in the parish of ——, in the county of —— :

3. ALL THAT yearly tithe rentcharge of £—— issuing out of lands in the parish of ——, in the county of —— :

4. THE following perpetual yearly rentcharges :—

Amount of rentcharge	Lands Charged.	Date of Grant reserving the rent.	Parties to Grant.

5. THE following lands affected by perpetual rentcharges :—

Date of Grant.	Parties to Grant.	Lands conveyed.	Rents reserved.

6. PARTICULARS of freehold lands :—

No. on Plan.	Description.	Tenant's name.	Acreage.

Benefices Act, 1898.

(*h*) If the assent includes an advowson, it should be registered with the Diocesan Registrar pursuant to the Benefices Act, 1898, within one month.

Second Part.

Particulars of enfranchised lands (formerly copyhold of the Manors of ——) affected by manorial incidents.

No. on Plan.	Description.	Tenant's name.	Acreage.

Third Part.

Particulars of leaseholds.

Date of Lease.	Parties.	Land Demised.	Term.	Yearly rent.

[SECOND SCHEDULE.] (*i*)

Particulars of incumbrances.

Amount. owing.	Present Mortgagees.	Land charged.	Date of Mortgage.

(*i*) Where there are incumbrances, it is clear that the usual covenant or agreement for indemnity should be given. It makes no difference how the title arises under which an assent is claimed; thus, if land is given to trustees in trust for a person of full age absolutely, the trustees can be ignored; they cannot take a legal title under the Will and have no equity to the land. If by reason of a joint tenancy (L. P. Act, 1925, s. 36) or a tenancy in common (*ib.*, s. 34; 1st Sch., Pt. IV; S. L. Act, 1925, s. 36) or any other implied (L. P. Act, 1925, ss. 25 (4), 31, 32; Ad. of E. Act, 1925, s. 33) or express trust for sale the land becomes subject to such a trust, the assent must be made in favour of the trustees on trust for sale. Similarly, if the land becomes "settled land," the vesting assent must be made in favour of the tenant for life or statutory owner. If the land was settled *before* the death of a tenant for life or statutory owner, the persons to make the assent will (unless they renounce) be the special representatives to whom probate or representation has been granted limited to the settled land.

Title to have an assent.

Trustees for sale.

Tenant for life and statutory owners.

In no case can a valid assent to the passing of a legal estate be made in favour of an infant: L. P. Act, 1925, s. 1 (6); the land will, during a minority, either be held on trust for sale: L. P. Act, 1925, ss. 19 (2), 28 (4); 1st Sch.,

Infants.

No. IV.

ASSENT *by* PERSONAL REPRESENTATIVES *in favour of a* PERSON SOLELY *and* ABSOLUTELY ENTITLED *free from family charges or other incumbrances; no* INDEMNITY *being required.*(*j*) (*Legal Estate.*)

I, A. B., of, &c., as the personal representative of X. Y., late of, &c., deceased, do this —— day of ——, 19—, hereby, As Personal Representative, assent to the vesting in C. D., of, &c., of—

[ALL THAT farm, &c.] *or*

[ALL the property described in the Schedule hereto] for all the estate or interest of the said X. Y. at the time of his death [*or* for an estate in fee simple].

AS WITNESS, &c. [*Add Schedule if required.*]

Pt. III, para. 2; or will become settled land: S. L. Act, 1925, ss. 1 (1) (ii) (d), 19 (3), 26, 27; 2nd Sch., para. 3.

Postponement of assents.

It is expedient generally to postpone assents and allow the land to be managed by the personal representatives (Ad. of E. Act, 1925, s. 39) till there is a person of full age in whose favour the assent can be made, and until the charges immediately raisable have been cleared; in the meantime the persons interested can be let into possession: *ib.*, s. 43.

Date of death of testator or intestate.

It is immaterial whether the testator or intestate died before or after 1st January, 1926, provided that the land is vested in the personal representatives the new law relating to assents applies: *ib.*, s. 36 (12).

Registration in Middlesex and Yorkshire.

Assents affecting legal estates in land in Middlesex and Yorkshire must be registered in the local deeds register: L. P. Act, 1925, s. 11; unless the title to the land is registered: L. R. Act, 1925, s. 135. Registration of title dates back to the date of application, hence when the title is about to be registered it is not necessary to register in a deeds register.

Freedom from stamp duty.

In accordance with *Kemp* v. *I. R. C.* [1905], 1 K. B. 581; 74 L. J. K. B. 112, assents do not attract stamp duty when not under seal: Ad. of E. Act, 1925, s. 36 (11); the principle that each change of legal ownership should be evidenced by something in writing, increases the number of documents of title required, and, though an assent operates as a conveyance, it would not on this account have been fair to impose a stamp.

Security to be given to personal representatives.

(*j*) This is the simple form given in L. P. Act, 1925, 5th Sch. (Form No. 8), applicable where a person is solely and absolutely entitled. Where a covenant for indemnity is required (see last Precedent) it is more convenient to express the assent to be made between parties. A covenant or agreement for indemnity will generally be sufficient to cover liabilities, though Ad. of E. Act, 1925, s. 36 (10), speaks of a "security for the discharge of any such duties, debt or liability"; thus in proper cases a deposit of securities might be required, but this will seldom happen. If the testator or intestate was not personally liable for the rent or for the performance of the covenants in a lease, this Form can be used, otherwise the last Precedent should be used and adapted to the case. The usual covenants implied by conveying "As Personal Representative" of a deceased person are implied in an assent, though not under seal: L. P. Act, 1925, s. 76 (1) (f); Ad. of E. Act, 1925, s. 36 (3). See also generally as to assents, notes to last Precedent.

Leaseholds.

Covenants for title.

[NOTE.—The expression "conveyance" includes an assent, but an assent will relate back to the death unless a contrary intention appears. An assent may be properly given, though duties remain to be paid, if the personal representative is satisfied in regard to the arrangement made for payment.(*k*)]

No. V.

ASSENT *by* PERSONAL REPRESENTATIVES *to the vesting of* FREEHOLDS *in* THEMSELVES *as* TRUSTEES FOR SALE.(*l*) (*Legal Estate.*)

WE, A. B., of, &c., and C. D., of, &c., as the personal representatives of X. Y., late of, &c., deceased, do this —— day of ——, 19—, hereby :—

Assent on trust for sale.

1. AS Personal Representatives assent to the vesting in ourselves of :

ALL AND SINGULAR the property and rights mentioned in the Schedule hereto :

TO HOLD unto ourselves in fee simple, UPON TRUST to sell the same or any part thereof with power to postpone the sale : And to stand possessed of the net proceeds of sale and other money applicable as capital and the net rents and profits until sale, Upon the trusts respectively declared concerning the same by the Will dated, &c., of the late ——, who died, &c. [*or* by the Settlement dated, &c.] [*or* Upon the trusts and subject to the

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(*k*) This note is part of the Act itself and is borne out by Ad. of E. Act, 1925, s. 36 ; "conveyance" is defined in L. P. Act, 1925, s. 205 (1) (ii).

Assent in favour of selves.

(*l*) This is taken almost verbatim from Form No. 9 in the 6th Sch. to the L. P. Act, 1925. Where an assent is made by personal representatives in favour of other persons it is more convenient to express it as being made between parties, see Prec. No. VI, *infra*. For a power to convey to self : L. P. Act, 1925, s. 72. Personal representatives will only assent in favour of themselves after administration (so far as it affects the property in question) has been completed, and generally with a view to a new trustee being appointed for the purposes of the trust for sale.

Personal representatives become trustees for sale, when.

In the text it is assumed that the personal representatives either took as devisees in trust for sale under the Will of their testator, or that they were trustees for sale under the settlement referred to, the testator having directed that the land should be held on the trusts of that settlement, or that they are the representatives of the intestate who owned the land : Ad. of E. Act, 1925, s. 33. They may also become trustees for sale by reason of the land having been devised in undivided shares : L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (1) ; or as S. L. Act trustees of settled land limited to devolve in undivided shares : *ib.*, para. 1 (3) as amended : S. L. Act, 1925, s. 36.

powers and provisions upon and subject to which the same ought to be held as forming part of the estate of ——, who died intestate on, &c.]

[Additional powers.(m)]

[2. DECLARE that in addition to the powers which are by the Law of Property Act, 1925, and by any other statute conferred on trustees for sale the following powers are also exercisable from time to time by the trustees hereof, namely :—[*set out the powers, if any.*]

Power to appoint new trustees.(n)

3. AND declare that F. G., of, &c., and M. G., of, &c., during their joint lives, and the survivor of them during his or her life, have or has power to appoint new trustees of this Assent :

[*or* that the statutory power to appoint new trustees applies to this Assent, *or otherwise as the case requires to correspond with the power applicable to the trust for sale created by the Will, Settlement, intestacy or statute.*]

AS WITNESS, &c. (*Add Schedule.*)

No. VI.

ASSENT *by* PERSONAL REPRESENTATIVES *to the vesting of land in other persons as* TRUSTEES FOR SALE. (*Legal Estate.*)

Parties.

THIS ASSENT is made the —— day of ——, 19—, BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one part, and E. F., of, &c., and G. F., of, &c. (hereinafter called the Trustees), of the other part : WHEREAS :—

Additional powers.

(m) No additional powers beyond those conferred by statute (*e.g.*, L. P. Act, 1925, ss. 28 and 29 ; T. Act, 1925, Pt. II) could well be conferred save by the instrument, if any, creating the trust for sale, or by a powers deed made by all the persons beneficially interested being *sui juris*.

Appointment of new trustees of assents and conveyances creating trusts for sale.

(n) The persons having power to appoint new trustees of a conveyance or assent on trust for sale are bound to appoint the same persons (if any) to be trustees of the settlement (including a Will), of the proceeds of sale : L. P. Act, 1925, s. 24 ; this of necessity does not apply where the trusts of the proceeds of sale are declared by the instrument which creates the trust for sale. There must not be more than four trustees for sale : T. Act, 1925, s. 34. The trustees of the conveyance or assent must be appointed by a separate instrument from that whereby new trustees are appointed of the settlement (if any) of the net proceeds : *ib.*, s. 35 (1) ; a memorandum of the appointment must be endorsed on the conveyance or assent : *ib.*, s. 35 (3). The power to appoint is conferred by : *ib.*, s. 36.

Curtain effected by assents.

An assent to the passing of a legal estate operates to draw a curtain over the equitable interests ; unless a memorandum of a previous assent or conveyance has been endorsed on the probate or letters of administration, the assent is sufficient evidence that the person in whose favour the assent is given is the person entitled to have the legal estate conveyed to him, and upon the proper trusts, if any : Ad. of E. Act, 1925, s. 36 (7).

Death and Probate.

(1) X. Y., being at his death entitled to the property mentioned in the —— Schedule hereto [subject to the incumbrances mentioned in the —— Schedule hereto but otherwise] free from incumbrances, died on the —— day of ——, 19—, having by his Will dated ——, 19—, appointed the Grantors to be his executors, who on the —— day of ——, 19—, duly proved the same [with —— codicils thereto not affecting the appointment of executors] at the —— Probate Registry :

[Death intestate.]

[*or* died intestate on the —— day of ——, 19—, and on the —— day of ——, 19—, Letters of Administration to his estate were granted by the —— Probate Registry to the Grantors :]

Death duties.

(2) All death duties payable on the death of the said testator [intestate] in respect of the said property have been duly discharged :

Dealings by personal representatives.(*o*)

(3) The Grantors have created the several leases mentioned in the —— Schedule hereto but have not in other respects given or made any assent or conveyance affecting the legal estate to which this assent relates :

Title of Trustees.(*p*)

(4) The Trustees having become entitled to have the said property vested in them on trust for sale have requested the Grantors to execute such assent as hereinafter contained which the Grantors have agreed to do in manner hereinafter appearing :

NOW IT IS HEREBY DECLARED as follows :—

Assent on trust for sale.

1. THE Grantors, As Personal Representatives of the said testator [intestate], hereby assent to the vesting in the Trustees of :—

ALL, &c. (*for the appropriate parcels see Prec.* III, *supra*),

TO HOLD unto the Trustees in fee simple [*or* as to the said freehold properties (including enfranchised lands) in fee simple, but as to the enfranchised lands subject to the manorial incidents and rights of the lords of the manors remaining unextinguished, and as to the said leasehold properties at the rents and subject

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Statement by personal representatives.

(*o*) See Ad. of E. Act, 1925, s. 36 (6) ; this statement is good in favour of a purchaser. A sufficient "statement" is usually implied by the words "As Personal Representatives" : L. P. Act, 1925, s. 76 (1) (f) ; 2nd Sch., Pt. VI. See generally on this Precedent, notes to Prec. III, and to the last Precedent. The personal representatives are the persons accountable for the duties payable on the death : L. P. Act, 1925, s. 16.

Title of trustees for sale.

(*p*) The trust for sale may have been created by the Will of the testator, and though the personal representatives may have been the original trustees, other trustees may have been appointed in their place ; or a beneficiary under the Will or intestacy may have conveyed his equitable interest to trustees for sale ; or the testator may have devised the land to the trustees for sale holding under an existing conveyance or Will.

to the lessee's covenants and conditions affecting the same: And as to such of the property as may be affected thereby, subject to the incumbrances mentioned in the —— Schedule hereto, and in exoneration of the Grantors and of the estate and effects of the said testator [intestate] and also subject to and with the benefit of the leases and tenancies mentioned in the —— Schedule hereto so far as the same are subsisting: And as to all the properties], UPON TRUST to sell the same or any part thereof with power to postpone the sale: And to stand possessed of the net proceeds of sale and other money applicable as capital and the net rents and profits until sale, Upon the trusts respectively declared concerning the same by a conveyance on trust for sale dated, &c., and made, &c., or upon such other trusts as the same ought to be held from time to time (*or otherwise refer to the instrument creating the trust for sale*) (*or if the trust for sale is implied by statute say,* Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held by reason of —— (*stating shortly how the trust arose*)):

[Additional powers.]

[2. In addition to the powers (*continue as in clause* 2 *of last Precedent if there are any such powers; only such powers as relate to the land and might be material to a purchaser, mortgagee or lessee should be mentioned*).]

Power to appoint new trustees.

3. J. H., of, &c., and R. H., his wife, during their joint lives (*continue as in clause* 3 *of the last Precedent or otherwise as the case requires*).

Indemnity.

4. THE Trustees hereby agree [covenant] with the Grantors (*adapt clause* 2 *of Prec.* III, *supra, if the Trustees are in a position to give a covenant for indemnity. If not, a separate arrangement should be made with the beneficiaries to do what is requisite*).

AS [IN] WITNESS, &c. (*Schedules, see Prec.* III, *supra, and add a Schedule of leases granted by the representatives.*)

No. VII.

ASSENT *by Personal Representatives to the vesting of land in* BENEFICIAL OWNERS (*q*) *as joint tenants on trust for Sale. (Legal Estate.)*

Parties.

THIS ASSENT is made (*date*), BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one part and E. F.,

Joint tenants.

(*q*) Joint tenants beneficially entitled to land (not being settled land), hold the legal estate in trust for sale, but this does not prevent the survivor being solely and beneficially entitled from dealing with his legal estate as if it were not subject to a trust for sale: L. P. Act, 1925, s. 36 (as amended), though for the protection of a purchaser the land may be treated as subject to a of, &c., and G. F., his wife (hereinafter called the Beneficiaries) [*or if there are more than four persons who have become entitled in undivided shares, and have selected four of their number to act as trustees for sale, set out the names and addresses of the selected trustees* (hereinafter called the Trustees) *and continue as in last Precedent*] of the other part: WHEREAS:—

(1) to (3) (*Recitals as in last Precedent.*)

Title of Beneficiaries.

(4) The Beneficiaries having become absolutely and beneficially entitled to the said property as joint tenants [*or* in equal shares *or otherwise as the case may be* subject only to the incumbrances affecting the entirety mentioned in the —— Schedule hereto but free from incumbrances affecting undivided shares] have requested the Grantors to execute such assent as hereinafter contained which the Grantors have agreed to do in manner hereinafter appearing:

NOW IT IS HEREBY DECLARED as follows:—

Assent on trust for sale.

1. (*As in clause* 1 *of last Precedent, substituting* "Beneficiaries" *for* "Trustees," *down to and including the words* "rents and profits until sale," *and continue*)

UPON TRUST for the Beneficiaries as joint tenants absolutely [*or* in equal shares absolutely, *or otherwise as required to give effect to the beneficial interests. There is no objection where there are not more than four beneficiaries and they are parties to declaring the trusts of the proceeds by the instrument creating the trust for sale*].

Additional powers.(r)

2. THE Beneficiaries hereby declare that the Trustees for the time being hereof shall (in addition to all powers which are by statute conferred on trustees for sale) have the following powers, namely:—

Undivided shares.

trust for sale: *ib.*, s. 23. If land is to be held in undivided shares, the legal estate in the entirety will be held on trust for sale: *ib.*, ss. 34, 35; 1st Sch., Pt. IV; S. L. Act, 1925, s. 36 (as amended). If the proceeds are held in trust for persons of full age absolutely (the undivided shares not being encumbered) they may require the entirety to be vested in not more than four of them on trust for sale: L. P. Act, 1925, s. 3 (1) proviso. The last Precedent would cover such a case. The beneficiaries, if more than four, can by a separate powers deed direct the legal estate to be vested in four named persons, and give any additional powers required, including, if desired, an express power to appoint new trustees.

Powers deed.

Rights of persons entitled to proceeds of sale.

It is clear from s. 23, see the words "under the directions of the persons interested in the proceeds of sale" (also *ib.*, s. 3, and S. L. Act, 1925, s. 16), that the persons entitled to the proceeds of sale may give additional powers and general directions to the trustees for sale, or estate owners holding the legal estate in the entirety.

Absolute owners

(r) It is assumed in the text that beneficiaries are absolutely entitled, hence can confer such additional powers as they think fit; as the recitals

(1) All the powers which are by the Settled Land Act, 1925 (including, in particular, section sixty-four thereof without the restriction therein contained), or by section sixty-six of the Law of Property Act, 1925 (relating to further assurances), made exercisable with the leave of the Court, shall, for the purposes of this Assent, be exercisable at the discretion of the Trustees without any order of the Court: (*s*)

(2) A mortgagee shall not be concerned to see for what purpose money is raised: (*t*)

(3) Any person dealing with the Trustees for money or money's worth may assume that all transactions (if any) not authorised under any statutory power (as hereby extended) have been duly authorised by the persons interested.

[Power to appoint new trustees.]

[3. *In the case in the text which assumes that a husband and wife are the sole beneficiaries, no express power to appoint new trustees will be required; but if there are any beneficiaries (not acting as trustees) who have executed a powers deed, then the power (if any) must correspond with that given by such a deed.*]

[Indemnity.] (*u*)

[4. *Adapt clause* 2 *of Prec.* III, *supra. As in this case the trustees are the beneficiaries, there will be no objection to the covenant or agreement being given in the Assent.*]

AS [IN] WITNESS, &c. [*Add Schedules, see Prec.* III, *supra.*]

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conferring additional powers.

show that they are the only persons interested there will be no need in such a case for a separate powers deed. The powers do not bind any legal mortgagees whose legal charges or mortgage terms have priority to the trust for sale, but do bind the right of redemption which remains a legal estate till the mortgagees realise their security under L. P. Act, 1925, s. 88 or 89 (as amended). Compare the power in Vol. I, p. 655.

Any transaction authorised.

(*s*) As under S. L. Act, 1925, s. 64, any transaction which could have been validly effected by an absolute owner is (subject to an exception as to improvements) authorised, this removes any question as to raising money by mortgage or carrying out any other proper transaction.

(*t*) As to the specific power for raising money on mortgage: *ib.*, s. 71; and as to raising money at the request of the beneficiary: *ib.*, s. 16.

Order of payment of debts.

(*u*) The order of application of assets for the payment of debts, where an estate is solvent, is prescribed by Ad. of E. Act, 1925, 1st. Sch., Pt. II, but this may be varied by a testator: *ib.*, para. 8. Mortgage debts are primarily to be paid out of the security affected: *ib.*, s. 35. It will still be open for the representatives to exhaust the personal estate in paying simple contract debts in preference to mortgage debts unless the Will otherwise directs: *Re Samson* [1906], 2 Ch. 584; 76 L. J. Ch. 21 (over-ruling *Re Hankey* [1899], 1 Ch. 541; 68 L. J. Ch. 242), see also *Re Jennes* (1909), 53 Sol. J. 376. This will be particularly material when an assent is made for giving effect to a residuary gift. In effect Ad. of E. Act, 1925, s. 46, creates a residuary gift, the rights of the surviving spouse of the intestate to the personal chattels and £1,000 being treated as legacies.

Assents to give effect to residuary gifts.

No. VIII.

ASSENT *to the vesting of* REGISTERED LAND, *not being settled land.*(*v*)

H.M. Land Registry.

Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

(*Date.*) I, A. B., of, &c., as Personal Representative of the late C. D., of, &c., hereby assent to the land comprised in the title above referred to vesting in E. F., of, &c. [and G. H., of, &c.].

[Restriction where the land is held on trust for sale and the proprietors have no power to deal with it as absolute owners.]

[And I, the said A. B., apply for the entry of the following restriction :—(*w*)

Except under an Order of the Registrar, no disposition is to be registered unless authorised by the Settled Land Act, 1925, and, except where the sole proprietor is a trust corporation, no disposition under which capital money arises is to be registered unless the money is paid to at least two proprietors.]

(To be signed by A. B. and attested.)

No. IX.

VESTING ASSENT *of* SETTLED LAND *in favour of a* TENANT *by the* CURTESY *for giving effect to a* SETTLEMENT *arising on an* INTESTACY.(*x*) (*Legal Estate.*)

THIS VESTING ASSENT is made, &c. (*date*), BETWEEN A. B.,

Assents as respects registered land.

(*v*) See L. R. Act, 1925, s. 41 ; L. R. Rules, 1925, r. 170 ; *ib.*, Sch., Form No. 56 ; the precedent in the text follows that form. The heading to the form speaks of a devise or appropriation, but the form is available for any of the purposes authorised by Ad. of E. Act, 1925, s. 36. The form applies whether the intended proprietor is solely and absolutely entitled, or holds on trust for sale (whether express or implied), or as personal representative of another person. In the case of registered land an assent is not required as a curtain to screen the minor or equitable interests, this is done by the register itself, it follows that there is no need to declare a trust for sale in the assent ; whether the land is or is not subject to a trust for sale is a matter to be decided off the register. If the land is held on trust for sale, then the trustees for sale are the persons to be registered as proprietors : L. R. Act, 1925, s. 94. If there are additional powers these should be mentioned in the Assent, see Prec. V and VII, *supra*.

Assent not required as a curtain, when.

Trustees for sale to be registered as proprietors.

Registered restriction.

(*w*) The restriction in Form No. 10 in the Schedule to the rules applies where the trustees for sale are not also absolute owners or have not power to deal with the land as if they were absolute owners.

The survivor of joint tenants who is solely and beneficially entitled can deal with the land as if it were not subject to a trust for sale : L. P. Act, 1925, s. 36, as amended.

(*x*) For a short form of Vesting Assent : S. L. Act, 1925, 1st Sch., Form of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one part, and T. L., of, &c. (hereinafter called the Tenant for Life), of the other part: WHEREAS:—

Death of wife intestate.

(1) R. L. (the wife of Tenant for Life, to whom she was married on the —— day of ——) died intestate on the —— day of ——, 19——, being at her death seised of the freehold property mentioned in the First Schedule hereto for an estate in fee simple in possession IN TRUST for herself in tail, with divers remainders over, the Grantors being at her death the trustees for the purposes of the Settled Land Act, 1925, of the Settlement dated, &c., which created the said entailed interest:

Letters of Administration.

(2) On the —— day of ——, 19—, Letters of Administration were granted by the —— Probate Registry to the Grantors specially limited (*y*) to the settled land aforesaid:

Where a "settlement" can arise on an intestacy after 1925.

No. 5, and see notes to that form. A settlement cannot arise by reason of the death of a person intestate after 1925, save where a woman tenant in tail does not exercise the testamentary power to dispose of entailed property (L. P. Act, 1925, s. 176) leaving a husband who takes by the curtesy: *ib.*, s. 130; or where a lunatic living and of full age on 1st January, 1926, dies intestate entitled to real estate (not including chattels real) then under Ad. of E. Act, 1925, s. 51 (2), an infant heir-at-law (not a customary heir) might take; this would create a "settlement": S. L. Act, 1925, s. 1 (1) (ii) (d), when the S. L. Act trustees would, as "statutory owners," have the powers of a tenant for life after the administrators had assented: S. L. Act, 1925, s. 26; or the husband of the lunatic might become tenant by the curtesy and so become a tenant for life: *ib.*, s. 20 (1) (vii); or the wife might get her dower assigned by metes and bounds and so become tenant for life of the land assigned: *ib.*, ss. 1 (3), 19; or the heir being an infant at the death and afterwards attaining full age subject to unassigned dower: *ib.*, s. 1 (3), would be an absolute owner subject to a family charge: *ib.*, s. 20 (1) (ix), and so have the powers of a tenant for life; for a "settlement" once created: *ib.*, s. 1 (3); would thereafter continue: *ib.*, s. 3; by reason of the subsistence of the family charge. But, save in the above cases a trust for sale arises on an intestacy: Ad. of E. Act, 1925, s. 33; and where the land is subject to a trust for sale it cannot be "settled land": S. L. Act, 1925, ss. 1 (7), 3, as amended by L. P. (Amend.) Act, 1926, Sch. Though it may have been subject to a "settlement" the latter ceases as soon as the land is held on trust for sale, but the trustees for sale become entitled to exercise all the statutory powers of a tenant for life, including any additional powers conferred by the Settlement: L. P. Act, 1925, s. 28 (as amended).

Dower, unassigned, when creates a family charge.

General rule, trust for sale arises on an intestacy.

An immediate trust for sale destroys a settlement.

Who are S. L. Act trustees when there is a tenant by the curtesy.

(*y*) The interest of a tenant by the curtesy is deemed to be an interest arising under a settlement made by the wife: S. L. Act, 1925, s. 20 (3); of which settlement her personal representatives would be the S. L. Act trustees: *ib.*, s. 30 (3); unless apart from that sub-section there were such trustees. In this case there were such trustees under the settlement creating the entail, to whom special representation would be granted: Jud. Act 1925, s. 162 (replacing Ad. of E. Act, 1925, s. 10). Even under the old law the husband was passed over in a proper case: *In b. Ardern* (1898), P. 147; 67 L. J. P. 70.

Memorandum endorsed.

See that a Memorandum of the Assent is endorsed on the Letters of Administration: Ad. of E. Act, 1925, s. 36, and see notes to Prec. III, *supra*.

(3) The Grantors being satisfied (*z*) that (by reason of the birth on the —— day of ——, 19—, of G. L., a child of the said marriage capable of inheriting the said estate tail) T. L. is entitled to have the said property vested in him have, at his request, agreed to execute such vesting assent as is hereinafter contained :

Title of tenant for life.

NOW IT IS HEREBY DECLARED as follows :—

1. THE Grantors, As the Personal Representatives of the said R. L. in relation to the premises, (*a*) hereby assent to the vesting in the Tenant for Life of—

Vesting assent.

ALL the property and rights described in the First Schedule hereto for an estate in fee simple.

2. THE premises are vested in the Tenant for Life, Upon the trusts which by reason of the death of the said R. L., intestate as aforesaid, or under the Settlement hereinbefore mentioned, or otherwise, the same ought from time to time to be held.

Trusts.

3. THE Grantors are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

S. L. Act trustees.

4. THE additional or larger powers conferred by the above-mentioned Settlement in relation to the settled land are mentioned in the Second Schedule hereto, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. (*b*)

Additional powers.

Primâ facie the trustees of the prior instrument are trustees of a compound settlement ; but where there are no such trustees then, apart from any appointment by the Court, the S. L. Act trustees of the instrument under which there is a tenant for life are the trustees of the compound settlement : S. L. Act, 1925, s. 31 ; L. P. (Amend.) Act, 1926, Sch.

Trustees of compound settlements.

(*z*) It is only necessary that inheritable issue of the marriage should have been born alive during the coverture. The deceased must have been entitled in *possession*, but whether she held the land as her separate property or not is immaterial : *Hope* v. *H.* [1892], 2 Ch. 336 ; 61 L. J. Ch. 441. A purchaser will require evidence of the marriage and the birth of the child : S. L. Act, 1925, s. 110 (2) proviso.

When curtesy attaches.

(*a*) The special representatives have power to deal with the settled land without the concurrence of the general representatives, if any : Ad. of E. Act, 1925, s. 24.

Special representatives.

(*b*) As there is a compound settlement consisting of the original settlement and the settlement deemed to have been made by the wife (represented by the letters of administration), any additional powers given by the original settlement would be exercisable by the tenant by the curtesy. Independently of any family charges subsisting under the original settlement, the remainders over expectant on the termination of the estate tail, would, until it is barred, keep the settlement alive.

Additional powers.

Appointment of new trustees.

5. THE statutory power to appoint new trustees is applicable.(*c*)

IN WITNESS, &c.(*d*) [*Add Schedule of the land and a Schedule referring to the additional powers.*]

No. X.

VESTING ASSENT *of* SETTLED LAND *in favour of a* TENANT FOR LIFE *for giving effect to a* SETTLEMENT (*e*) *made by a* WILL. (*Legal Estate.*)

Parties.

THIS VESTING ASSENT is made, &c. (*date*), BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one part, and T. L., of, &c. (hereinafter called the Tenant for Life), of the other part: WHEREAS :—

Death and probate.

(1) X. Y., late of, &c., being at his death entitled to the property mentioned in the —— Schedule hereto [subject to the incumbrances mentioned in the —— Schedule hereto, but otherwise] free from incumbrances, died on, &c., having by his Will dated, &c., appointed the Grantors to be his executors, who, on the —— day of ——, 19—, duly proved the same [with

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(*c*) If any express power to appoint new trustees is in terms made exercisable by the tenant for life, then this clause must state that he has power to appoint.

Recitals; evidence.

(*d*) This is one of the cases within S. L. Act, 1925, s. 110 (2), proviso (c), hence it may be safer to take the assent under seal (stamp 10*s.*) in order that in twenty years' time the recitals may be evidence of the facts: L. P. Act, 1925, s. 45 (6); though an assent under hand would be an "instrument" within that sub-section.

Settlements made by Will.

Death duties; term to secure payment.

(*e*) Where a settlement is made by Will, the personal representatives will give effect to it by a vesting assent: S. L. Act, 1925, ss. 6, 8 (4) (b); a conveyance or assent under seal may reserve a term of years to the grantors for indemnifying them against unpaid death duties, interest and costs; this power is given *in terrorem* with a view to enabling the representatives to insist on proper provision being made for their payment, *e.g.*, by a direction to discharge them out of capital money (L. P. Act, 1925, s. 18), or by a mortgage for raising the duty as and when the instalments become due: *see* note to Form No. 5 in S. L. Act, 1925, 1st Sch.; also Ad. of E. Act, 1925, s. 36 (10). No precedent is given of the reservation of such a term as the practice is not recommended.

Letting beneficiary into possession pending the clearance of charges.

Though the representatives have no power to postpone an assent merely on the ground that duties are undischarged, it will generally be in the interests of all parties to postpone the assent till all family charges immediately raisable have been cleared, meantime the tenant for life should be let into possession: Ad. of E. Act, 1925, s. 43.

Settled land vested in personal representatives on 1st January, 1926.

If the settled land is vested in personal representatives on 1st January, 1926 (*e.g.*, as to leaseholds under the general law or as to freeholds under L. T. Act, 1897, Pt. I), or becomes vested in them before a principal vesting deed is executed, then this or the next Precedent will be applicable: *see* S. L. Act, 1925, 2nd Sch., para. 2.

Stamp Duty.

No stamp duty is payable in respect of a vesting assent not under seal: S. L. Act, 1925, 2nd Sch., para. 2 (2).

—— Codicils thereto not affecting the appointment of executors] at the —— Probate Registry :

Title of tenant for life.

(2) The Grantors being satisfied that the said property ought to be vested in the Tenant for Life on the trusts hereinafter referred to, have, at his request, agreed to execute such vesting assent as hereinafter contained :

NOW IT IS HEREBY DECLARED as follows :—

Vesting assent.

1. The Grantors, As the Personal Representatives of the said testator, hereby assent to the vesting in the Tenant for Life of—

All, &c. [*For Parcels and limitations of the estate to be taken, see Prec.* III, *supra. If it is convenient an habendum can be used, see Prec.* V, *supra.*]

Trusts.

2. The premises are vested in the Tenant for Life, Upon the trusts declared concerning the same by the Will hereinbefore mentioned, or other the trusts on which the same ought from time to time to be held.

S. L. Act trustees.

3. The Grantors are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

4. The additional or larger powers mentioned in the —— Schedule hereto are conferred by the said Will in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life.(*f*)

New trustees.

5. The power of appointing a new trustee or new trustees of the settlement is vested in the Tenant for Life during his life.(*g*)

Indemnity.

6. (*Adapt clause* 2 *of Prec.* III, *p.* 843, *supra. The tenant for life must not be made personally liable to pay duties payable out of capital or to pay the principal sums secured by mortgages.*)

As witness, &c. [*Add Schedules* (*h*), *see Prec.* III, *supra, and notes thereto, also add a Schedule of additional powers, if any.*]

Additional powers. Power of appointment.

(*f*) Only those relating to the settled land should be mentioned, not those relating to the creation of family charges or the investment or application of capital money. But if there is an over-riding power of appointment under which the powers of a tenant for life can be enlarged this fact should be mentioned. As to the powers which though expressed to be conferred on other persons are made exercisable by a tenant for life: S. L. Act, 1925, ss. 108–109; this was necessary as he is made the trustee of the land.

New trustees.

(*g*) This assumes that the Will gives a power to the tenant for life for the time being to appoint new trustees. If this is not so, but the statutory power is exercisable, this should be mentioned instead.

Incumbrances to be scheduled.

(*h*) Incumbrances which affect the life interest should not be scheduled, these are not material to the title to the legal estate : S. L. Act, 1925, s. 104 ;

No. XI.

VESTING ASSENT *by the* SPECIAL REPRESENTATIVES *of a* LATE TENANT FOR LIFE, *the land having been settled previously to his death, to give effect to the subsisting trusts of a* SETTLEMENT, *including a* WILL.(*i*) (*Legal Estate.*)

Parties.

THIS VESTING ASSENT is made, &c. (*date*), BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one part, and T. L., of, &c. (hereinafter called the Tenant for Life), of the other part: WHEREAS:—

Death and special probate or administration.

(1) X. Y., late of, &c., died [intestate] on the ——, being at his death entitled to the properties mentioned in the—— Schedule hereto for legal estates, but by virtue of a Settlement, dated —— [*or* by virtue of the Will (hereinafter called the Principal Will), dated ——, and proved ——, of the late R. Y.], IN TRUST for himself for life, with divers remainders over, whereof the Grantors were, at the date of the said death, the trustees for the purposes of the Settled Land Act, 1925; And on the ——, 19—, Probate of the Will, dated, &c., of the said X. Y., was granted by the —— Probate Registry to the Grantors specially limited to the settled land aforesaid [*or* Letters of Administration as respects the estate of the said X. Y. were granted by the —— Probate Registry to the Grantors specially limited to the settled land aforesaid]:

Title of the tenant for life.

(2) The Grantors, being satisfied that the said properties ought to be vested in the Tenant for Life on the trusts hereinafter

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nor should family charges or powers to create family charges be mentioned. The legal mortgages affecting the settled land which cannot be overreached must be scheduled, not those created by a remainderman.

Special representation as respects settled land.

Settlement terminating by reason of the death.

Deed of discharge unnecessary.

Tenant in tail.

(*i*) This Precedent applies where a tenant for life living on 1st January, 1926, dies before a vesting deed is made in his favour: S. L. Act, 1925, 2nd Sch., para. 2; for under L. P. Act, 1925, 1st Sch., Pt. II, para. 5, the legal estate vests in him. It also applies to the ordinary case of a tenant for life dying during the subsistence of a settlement: S. L. Act, 1925, s. 7. In both of these cases representation will be granted to the S. L. Act trustees of the settlement specially limited to the settled land: Ad. of E. Act, 1925, s. 22 (testate cases); Jud. Act, 1925, s. 162, replacing Ad. of E. Act, 1925, s. 10 (intestate cases). If by reason of the death the settlement determines (*e.g.*, where the land becomes vested in an absolute owner free from family charges, or becomes subject to a trust for sale) then in place of a vesting assent, an absolute assent, or an assent on trust for sale will be executed: S. L. Act, 1925, s. 7 (5). No deed of discharge under *ib.*, s. 17, will be required in such a case: *ib.*, s. 110 (5). If a tenant in tail becomes entitled free from family charges and bars the entail before an assent is given, the assent would take the form of an absolute assent.

referred to, have, at his request, agreed to execute such Vesting Assent as hereinafter contained:

NOW IT IS HEREBY DECLARED as follows:—

Vesting assent.

1. THE Grantors, As the Personal Representatives of the said X. Y., deceased, hereby assent to the vesting in the Tenant for Life of—

ALL, &c. (*For Parcels and limitations of the estates to be taken see Prec.* III, *supra. If it is convenient, an habendum can be used.*)

2 to 6. (*As in last Precedent, but in clause* 4, *instead of* "the said Will" *refer to* "the above-mentioned Settlement" *or to* "the Principal Will," *as the case requires. As to clause* 6, *an indemnity may be required as respects leaseholds for the protection of the estate of* X. Y., *and of the Grantors.*(*j*))

AS WITNESS, &c. [*Add Schedules, see Prec.* III, *supra, and notes thereto, also a Schedule of additional powers, if any. As the S. L. Act*, 1925, *gives such wide powers, it will be found that in many cases there are no additional powers.*]

No. XII.

VESTING ASSENT *in favour of* STATUTORY OWNERS (*k*) *of settled land.* (*Legal Estate.*)

1. WE, A. B., of, &c., and C. D., of, &c., as the personal representatives of X. Y., deceased, late of ——, who died on ——,

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Stamp if indemnity is given.

(*j*) Though a vesting assent is free from stamp duty if not under seal, still if an agreement for an indemnity is added it should be executed over a sixpenny stamp. If it is taken under seal the stamp will be 10*s*.

Named persons.

All assents must be made in favour of named persons and must be in writing. An assent not in writing or not in favour of a named person will not pass a legal estate: Ad. of E. Act, 1925, s. 36 (4).

Persons who became statutory owners.

(*k*) The persons who become "statutory owners" are—

(i) During a minority, the S. L. Act trustees after a principal vesting instrument has been executed: S. L. Act, 1925, s. 26 (1) (b). They (as in the text) will generally be the executors; save for the purpose of obtaining an up-to-date description of the property it will seldom be necessary to have a vesting instrument during a minority for the personal representatives have the statutory powers of a tenant for life: Ad. of E. Act, 1925, s. 39.

(ii) Where there is no tenant for life (*e.g.*, by reason of the subsistence of a discretionary trust): S. L. Act, 1925, s. 23. In this case the person on whom the powers are expressly conferred by the settlement will be the "statutory owner." In default of any such express power, the S. L. Act trustees will be the statutory owners.

Where the statutory owners are not the same persons as the S. L. Act trustees, the vesting assent will be in the form of Prec. X, *supra*, with slight

Assent to selves.

having made a Will dated ——, and proved ——, do this —— day of ——, 19—, hereby, As Personal Representatives, assent to the vesting in ourselves of—

ALL the properties and rights described or referred to in the Schedule hereto for all the estate or interest of the said X. Y. at the time of his death.

Trusts.

2. THE premises are vested in us as Statutory Owners, Upon the trusts declared concerning the same by the above-mentioned Will.

S. L. Act trustees.

3. WE are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

4. THE following additional or larger powers are conferred by the said Will in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on us as statutory owners.

[(1) *Here set out any additional powers.*]

New trustees.

5. THE statutory power to appoint new trustees is applicable to this Assent.

AS WITNESS, &c. (*Add Schedule of properties, and see note to Schedules in Prec.* III, *supra.*)

No. XIII.

VESTING ASSENT *of* REGISTERED LAND *for giving effect to a settlement created by a* WILL.(*l*)

H.M. Land Registry.

Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

(*Date.*) PURSUANT to the Will, proved, &c., of M. N., deceased, We, E. F., of, &c., and G. H., of, &c., As Personal Representatives, hereby transfer to C. D., of, &c., the land comprised in the title above referred to.

AND WE DECLARE as follows :—

(A) THE land is vested in the said C. D., Upon the trusts from time to time affecting it by virtue of the said Will.

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modifications, *e.g.*, they will be referred to as "statutory owners" instead of as "the tenant for life."

Variations.

(*l*) See L. R. Act, 1925, s. 41; L. R. Rules, 1925, r. 170; *ib.*, Sch., Form No. 57. In other cases this Precedent should be adapted to meet the points dealt with in the foregoing precedents relating to unregistered land,

(B) WE are the trustees of the said Will for the purposes of the Settled Land Act, 1925.

(C) THE following powers relating to the land are conferred by the said Will in extension of those conferred by the Settled Land Act, 1925, namely—

[(i) *Set out the powers, if any.*]

(D) THE said C. D. has power to appoint new trustees of the settlement. (*Or otherwise, as the case may be.*)

AND we apply for the entry of the following restrictions :—

No disposition under which capital money arises is to be registered unless the money is paid to E. F., of, &c., and G. H., of, &c. (the trustees of the settlement, of which there must be two and not more than four individuals or a trust corporation), or into Court.

Except under an order of the Registrar, no disposition is to be registered unless authorised (*m*) by the Settled Land Act, 1925.

(*To be signed by E. F. and G. H. and attested.*)

No. XIV.

ABSOLUTE ASSENT *by one set of* PERSONAL REPRESENTATIVES *in favour of other* PERSONAL REPRESENTATIVES.(*n*) (*Legal Estate.*)

THIS ASSENT is made, &c. (*date*), BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Grantors), of the one Parties.

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bearing in mind that in the case of registered land it is not the vesting instrument but the register itself that operates as a screen to mask the minor or equitable interests. The vesting instrument or transfer should give to the registrar such information as may be requisite to enable him to make the proper entries in the register : *cf.* Form 9 in the Schedule to the Rules relating to dealings with a mansion house.

Stamp duty. A vesting assent of registered land does not attract Inland Revenue Stamp Duty.

Additional powers. (*m*) The references to powers conferred by the S. L. Act, 1925, include powers conferred by the settlement in extension of the statutory powers : L. R. Rules, 1925, r. 58 (2) ; see generally as to settled land : *ib.*, rr. 56–59 ; Forms 9 to 12 in schedule thereto ; also L. R. Act, 1925, ss. 86–92.

(*n*) The personal representatives of the successor have not, it is assumed, administered his estate, and may require the property for discharging liabilities. Assent may be made to a trustee in bankruptcy. Similarly, if the successor had become a bankrupt, an assent might be made in favour of a trustee in bankruptcy ; a sole trustee in bankruptcy or a sole trustee of a deed of arrangement can now give receipts for capital money : L. P. (Amend.) Act, 1926, s. 3. The function of an assent is to clothe a person (not being a purchaser from the representatives) with any legal estate which he is entitled to call for : Ad. of E. Act, 1925, s. 36 (1).

part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Grantees), of the other part : WHEREAS :—

Death and probate or administration.

(1) X. Y., late of —— (hereinafter called the Predecessor), being at his death entitled to the property mentioned in the —— Schedule hereto for an estate in fee simple in possession, died on the ——, 19—, having by his Will dated, &c., appointed the Grantors to be his executors, who on the ——, 19—, duly proved the same at the —— Probate Registry [*or* died intestate on the ——, 19—, and Letters of Administration to his estate were on the ——, 19—, granted by the —— Probate Registry to the Grantors] :

Discharge of duties, &c.

(2) All duties and other claims affecting the said property on the death of the Predecessor have been duly discharged :

Death of successor.

(3) R. S., late of —— (hereinafter called the Successor), being the person who had become equitably entitled to the said property, died on the ——, 19—, having by his Will dated, &c., appointed the Grantees to be his executors, who on the ——, 19—, duly proved the same at the —— Probate Registry [*or* "died intestate," *as above, referring to the* "Grantees" *instead of the* "Grantors"] :

Request for assent.

(4) The Grantees have requested the Grantors to execute such assent in their favour as is hereinafter contained, which the Grantors have agreed to do in manner hereinafter appearing :

Assent.

NOW the Grantors, As the Personal Representatives of the Predecessor, hereby assent to the vesting in the Grantees of :—

ALL AND SINGULAR the freehold properties and rights mentioned in the Schedule hereto for an estate in fee simple in possession, TO BE HELD by the Grantees as part of the estate and assets of the Successor.

AS WITNESS, &c. (*Add Schedule.*)

No. XV.

NOTICE *of an* ASSENT *to be endorsed on the* PROBATE *or* LETTERS OF ADMINISTRATION.(*o*)

(*Date.*) ON this date an Assent [*or* a Vesting Assent] was made in favour of —— (*give name and address*) to the vesting of (*refer shortly to the property affected by the assent*).

Endorsement of notice.

(*o*) The person in whose favour an assent or conveyance is made by a personal representative may require this notice to be endorsed and the probate or letters of administration to be produced to show that it has been endorsed or permanently annexed thereto at the cost of the estate of the deceased :

No. XVI.

APPROPRIATION *of* PROPERTIES *among the* PERSONS *interested under the* STATUTORY (*p*) POWER *as varied by a* WILL. (*Equitable Interests.*)

THIS DECLARATION OF TRUST is made, &c. (*date*), BETWEEN X., of, &c., and Y., of, &c. (hereinafter called the Executors), of the first part [*add as many other parties, whether as absolute owners, trustees for sale, tenants for life, personal representatives, &c., in whose favour allotments are to be made*]: WHEREAS:— Parties.

[(1) *Recite the Will, showing the appointment of executors, any settled legacies, the gifts of any annuities, the general devise and bequest on the usual administration trusts, the trusts affecting the residue, the settlement of the daughters'* [*or children's*] *shares, and provision authorising the statutory power of appropriation to be exercised without* (*q*) *consent* (*e.g., by incorporating Form* 6 *of the Statutory Will Forms*), *or other express power to appropriate at the discretion of the executors or trustees.*] [Will, &c.]

[(2) *Recite testator's death and probate, leaving a wife and issue, giving dates of birth.*] [Death, &c.]

[(3) *Recite payment of funeral and testamentary expenses, debts* (*except mortgage debts*), *and death duties, the payment or discharge of absolute legacies, the setting aside of investments* (*scheduling them*) *to meet annuities and any immediate settled legacies, and the manner in which all specific devises and bequests have been discharged and other dealings.*] [Payments and other dealings.]

Ad. of E. Act, 1925, s. 36 (5). This should be done, otherwise his rights may be postponed in favour of a subsequent purchaser without notice: *ib.*, s. 36 (6), (7).

It is convenient to leave a tabulated page at the end of the probate or letters, in which notices of dealings by the personal representatives can be conveniently inserted.

(*p*) See Ad. of E. Act, 1925, s. 41. This extends to the real and personal property of a testator or intestate whether dying before or after 1st January, 1926, and authorises an appropriation in or towards satisfaction of any legacy, or any other interest or share in his property, whether settled or not; but an appropriation cannot be made so as to affect prejudicially any specific devise or bequest. The expression "settled legacy, share or interest" includes one to which a person is not absolutely entitled at the date of the appropriation: sub-s. (7). A power to value and employ an agent for that purpose and to execute all necessary conveyances and assents is given by sub-s. (3). Power to appropriate.

(*q*) Ad. of E. Act, 1925, s. 41 (1), requires certain consents to be given; *semble*, this would attract *ad valorem* duty as on a conveyance on sale if the consents were not dispensed with by the testator: *Re Lepine*, [1892] 1 Ch. 210, 216; *Re Beverly* [1901], 1 Ch. 681; 70 L. J. Ch. 295. Stamp duty.

For Precedents of partition deeds by trustees for sale under L. P. Act, 1925, s. 28, see Vol. I, pp. 861, *et seq.* Partition by trustees for sale.

[Widow's death.] [(4) *Recite death of any widow entitled to life interest in residue and payment of the income accruing up to her death, and any duties left to be paid on her death.*]

[Reversionary legacies.] [(5) *Recite the setting aside of funds and property in satisfaction of reversionary settled legacies to take effect on the death of the widow.*]

[Net residue.] [(6) *Recite that after setting aside the funds and making the payments aforesaid and setting aside a sum of £—— to meet costs, which, so far as not required for that purpose, is to be added to the annuity fund, the net residuary estate is represented by the lands, mortgage debts and other investments mentioned in the Schedules.*]

[Dealings by beneficiaries with their shares in residue.] [(7) *Recite dealings by beneficiaries absolutely entitled with their shares, showing whether they are to be held on trust for sale, or are to be treated as strictly settled, having elected to take the land allotted to a share as land or otherwise.*]

[Valuation and allotment.] [(8) *Recite valuation of the net residue and allotment by the executors, in the exercise of their discretion (independently of the annuity fund which is to be further dealt with as and when the annuities cease) showing by the schedules how each fund or property is to be taken and whether or not subject to mortgage debts, and what property is to be retained by the executors as trustees for sale of the Will to answer shares thereby settled.*]

[Agreement.] [(9) *Recite agreement to execute declaration of trust.*]

NOW THIS DEED WITNESSETH and it is hereby declared as follows :—

Declaration of trust.

1. (1) THE Executors shall, at the cost of the estate of the said testator, execute all such vesting and other assents, transfers of investments (including transfers of mortgages) and all such other assurances as may be required for giving legal effect to the appropriations or allotments hereinbefore mentioned, and in the meantime shall hold the properties upon the trusts which would have been applicable thereto if the said assurances had been executed :

(2) So far as regards the property to be retained to answer any share or interest settled by the said Will the Executors shall (as trustees of the said Will but without prejudice to the trust for sale therein contained) stand possessed thereof Upon the trusts and subject to the powers and provisions requisite for giving effect to the allotments and appropriations hereinbefore mentioned, and in particular shall (at the cost aforesaid) execute in regard to land all such assents on trust for sale in favour of

themselves as trustees of the said Will, as may be required for determining the executorship as respects such land.(r)

Savings.

2. NOTHING herein contained shall affect the application of the annuity fund or of the surplus income thereof, or of any other property which may hereafter fall in and become part of the assets of the said testator.

IN WITNESS, &c. [*Add the requisite Schedules, setting out particulars of mortgage debts in the second part of a Schedule where the property in the first part is intended to be taken subject thereto. A separate release and covenant for indemnity can be given to the executors.*]

No. XVII.

APPROPRIATION *of properties among the persons interested on an* INTESTACY *under the* STATUTORY *power.(s) (Equitable Interests.)*

Parties.

THIS DECLARATION OF TRUST is made, &c. (*date*), BETWEEN X., of, &c., and Y., of, &c. (hereinafter called the Administrators), of the first part [*Add as many parties, whether as absolute owners, trustees for sale, tenants for life, personal representatives, &c., in whose favour allotments are to be made or whose consents are required under Ad. of E. Act*, 1925, *s.* 41]: WHEREAS:—

[Marriage of intestate, &c.]

[(1) *Recite the marriage of the intestate, the births of his children, giving dates, the marriages and deaths of any children, whether or not leaving issue, living at the death of the intestate, giving dates of the births of the issue, marriage settlements containing covenants to settle and any other facts material to show how the beneficial interests in the intestate's property were held at the death, having regard to Ad. of E. Act*, 1925, *ss.* 33 (*trust for sale*), 46 (*rules as to succession*), 47 (*statutory trusts per stirpes*)]:

[Death of intestate, &c.

[(2) *Recite death of intestate and grant of administration*]:

[Payment of debts, &c.]

[(3) *Recite payment of debts* (*except mortgage debts*) *and duties, sales and other acts relating to administration*]:

[As to widow's absolute interests.]

[(4) *Recite the handing over of the "personal chattels" and the satisfaction of the sum of* £1,000 *payable to the widow*: *ib., s.* 46 (1) (i), 48]:

Applicable to registered land.

(*r*) This Precedent, as relating only to equitable or minor interests, applies as much to registered as to unregistered land.

Stamp.

(*s*) See notes to last Precedent. As consents are required for the purposes of the appropriation, the stamp must be adjudicated. A declaration of trust can, in a proper case, be treated as a conveyance on sale of equitable interests for purposes of stamp duty.

[Death of widow, &c.]

[(5) *Recite death of widow and payment to her or her representatives of a moiety of the income of the net residue accruing up to her death or the redemption of her life interest by payment of a capital sum : ib., s.* 48. *Payment of any further duties remaining to be paid on her death*]:

[Dealings by beneficiaries.]

[(6) *Recite dealings by beneficiaries with their shares since the death of the intestate, showing whether they are vested in trustees for sale, or by reason of a death in personal representatives, or ought to be treated as settled land, &c.*]:

[Appropriation of net residue with consents.]

[(7) *Recite valuation and appropriation by* "the Administrators" *with such consents as are required by s.* 41 *of the Scheduled properties (being the net residue), the setting aside of a sum to pay costs, and showing by the Schedules how each fund or property is to be taken, and whether subject or not to mortgage debts, and what property is to be retained by the Administrators to answer the contingent share of an infant*]:

[Agreement.]

[(8) *Recite agreement to execute declaration of trust*]:

NOW THIS DEED WITNESSETH and it is hereby declared as follows :—

Declaration of trust.

1. THE Administrators shall, at the cost of the estate of the said intestate, execute all such vesting and other assents, transfers of investments (including transfers of mortgages), and all such other assurances as may be required for giving effect to the appropriations and allotments hereinbefore mentioned, and in the meantime shall hold the properties upon the trusts which would have been applicable thereto if the said assurances had been executed.

Savings.

2. NOTHING herein contained shall affect the right of the personal representatives from time to time of the said intestate to make further appropriations of shares or interests which have not become absolutely vested or to deal with any property (not hereby absolutely appropriated) or which may hereafter fall in or become part of the assets of the said intestate.

IN WITNESS, &c. [*Add the requisite Schedules setting out particulars of mortgage debts in the second part of a Schedule, where the property in the first part is intended to be taken subject thereto. Show also by the Schedules what sum (if any) has to be brought into account in ascertaining the share of a child of the intestate: Ad. of E. Act,* 1925, *s.* 47 (1) (iii) ; *this does not apply where the share is not taken by the intestate's issue: ib., s.* 47 (2). *A separate release and covenant for indemnity can be given to the administrators, which can be made supplemental to this declaration of trust.*]

No. XVIII.

GRANT *of a rentcharge to a* DOWRESS (*being the* WIDOW *of a* LUNATIC *living, and of full age, on* 1*st January,* 1926), *in lieu of her* DOWER, *by way of family arrangement.*(*t*) (*Equitable Interest.*)

THIS GRANT is made, &c. (*date*), BETWEEN H. B., of, &c., M. B., of, &c., and D. B., of, &c. (hereinafter together called the Administrators), of the first part, the said H. B. (hereinafter called the Owner), of the second part, and the said D. B. (hereinafter called the Dowress), of the third part : WHEREAS :— Parties.

(1) A. B., of, &c. (hereinafter called the Intestate), on the, &c. (*date*), married the Dowress, and there was issue of the said marriage two sons and no more, namely, the Owner, who was born, &c., and a younger son, the said M. B., who was born, &c. : Marriage, &c., of lunatic.

(2) *Recite the Order appointing a Committee or Receiver in Lunacy of the Estate of A. B.* : Order in Lunacy.

(3) The Intestate died intestate on the ——, 19—, never having recovered his testamentary capacity since the date of the recited Order, being at his death seised of the freehold property mentioned in the Schedule hereto, for an estate in fee simple, in possession, free from incumbrances : Death, &c.

(*t*) See Ad. of E. Act, 1925, s. 51 (1). It is assumed that the heir-at-law was not an infant at the death of the intestate; had this been so the right to dower would have been converted into a family charge by S.L. Act, 1925, s. 1 (3), and a settlement would have been deemed to have been made by the intestate : *ib.*, s. 1 (2) ; the settlement would have remained subsisting after the heir had attained full age : *ib.*, s. 3. In that case (unless the dowress preferred to take a rentcharge in lieu of dower) the administrators would have merely executed a vesting assent in favour of the heir when of age, and have therein nominated themselves as S. L. Act trustees : *ib.*, s. 30 (3). Had there been only one administrator, he would under that sub-section have appointed an additional S. L. Act trustee to act with him before making the assent. Dower when a family charge.

If the heir is of full age at the death of the intestate, and the dowress does not consent to accept a rentcharge, he can, after an assent is made in his favour, make a settlement *ad hoc* under *ib.*, s. 21, and so place himself in a position to over-reach her equitable interest. Alternative procedure.

The Intestates' Estates Act, 1890, is repealed as to deaths after 1925 by Ad. of E. Act, 1925, 2nd Sched., Pt. I, thus, though the old general law as to "devolution" in regard to freeholds is restored in the special case provided for in s. 51 (2), *semble*, the dowress has no claim to a rateable part of the £500 charge in regard to the real estate. She takes the interests provided for her by s. 46 in regard to the leaseholds and other personal estate. Intestates' Estates Act, 1890.

In the unusual case of dower being assigned by metes and bounds, the letters of administration or probate (partial intestacy) relating to her husband's estate, becomes the "settlement" : S. L. Act, 1925, s. 1 (3), and as regards the land assigned, she becomes a tenant for life within s. 19, and has a right to require a vesting assent to be made in her favour. Dower assigned.

Administration.

(4) On the —— day of ——, 19—, Letters of Administration to the estate of the Intestate were granted by the —— Probate Registry to the Administrators, who, in due course of administration, have paid all death duties and other claims affecting the said freehold property:

Agreement to accept rentcharge.

(5) The Dowress has, at the request of the Owner (as heir-at-law of the Intestate), agreed, by way of family arrangement (*u*) to accept the yearly rentcharge hereinafter mentioned in satisfaction of all claims to dower or otherwise, in respect of the said freehold property:

NOW THIS DEED WITNESSETH, and it is hereby declared as follows:—

Grant of rentcharge.

1. (1) In consideration of the release hereinafter contained the Owner, As Settlor, hereby grants unto the Dowress:

One yearly rentcharge of £–, to commence from the death of the Intestate, and to be charged on and issuing out of the freehold property mentioned in the Schedule hereto, and to accrue from day to day, but to be paid by equal half-yearly payments, the first to be made at the end of six months from the death of the Intestate. Together with all statutory and other powers for compelling payment thereof,

To hold unto the Dowress during the residue of her life:

(2) Provided that all payments (if any) hitherto made in respect of dower shall be accepted towards discharge of the said rentcharge.

Release.

2. In consideration of the said grant, the Dowress, As Mortgagee, hereby releases the said freehold property and any other property affected thereby from all claims (other than the said rentcharge), in respect of dower or otherwise.

Vesting assent to be made, &c.

3. (1) The Administrators are hereby appointed to be the trustees hereof for the purposes of the Settled Land Act, 1925.(*v*)

[(2) *Add additional powers, if required.*]

(3) The Owner during his life shall have power to appoint new trustees hereof.

(*u*) Thus the rentcharge becomes a family charge: S. L. Act, 1925, s. 1 (1) (v).

Absolute owner subject to a family charge.

(*v*) See S. L. Act, 1925, s. 30 (1) (v), as to appointments of trustees by the persons beneficially entitled. Though the heir, after the vesting assent is made, becomes an absolute owner subject to a family charge within: *ib.*, s. 20 (1) (ix), he, or other the estate owner for the time being, can nevertheless deal with his legal estate subject to the equitable rentcharge: L. P. (Amend.) Act, 1926, s. 1; *e.g.*, where he desires to raise money for his private purposes and the rent-chargee does not consent to the rentcharge being postponed under S. L. Act, 1925, s. 16.

(4) THE Administrators shall forthwith, at the cost of the Owner, execute a Vesting Assent in his favour, in regard to the said property.

IN WITNESS, &c. (*Add Schedule.*)

NO. XIX.

SURRENDER *of a* LIFE INTEREST *to enable the* LAND *to be vested in* TRUSTEES *on* TRUST *for* SALE, *but not so as to affect* BENEFICIAL INTERESTS.(*w*) (*Equitable Interest.*)

Parties.

THIS SURRENDER is made, &c. (*date*), BETWEEN T. L., of, &c. (hereinafter called the Tenant for Life), of the one part, and B. L., of, &c., and R. L., of, &c. (hereinafter called the Executors), of the other part: WHEREAS:—

Will.

(1) A. L., late of, &c., by his Will dated, &c., after appointing the Executors to be his trustees and executors, and after making divers bequests, devised and bequeathed the freehold and leasehold properties mentioned in the Schedule hereto to his wife, the Tenant for Life, during her life, without impeachment of waste, with remainder (*x*) to the Executors UPON TRUST to sell the same and to stand possessed of the net proceeds and the rents and profits until sale on the trusts therein mentioned:

[Death, &c.]

[(2) *Recite death of testator and probate*:]

Scheme for rendering a vesting assent unnecessary.

Termination of a settlement by a trust for sale.

(*w*) It has been suggested that the S. L. Act, 1925, should be amended to authorise a tenant for life to require the settled land to be vested in trustees for sale, in simple cases, such as that in the text, so as to avoid having to make a vesting instrument in favour of the tenant for life and subsequently take out special representation to the settled land. Though s. 13 prohibits a legal estate in "settled land" from being conveyed (otherwise than by personal representatives) till a vesting instrument has been made in favour of the tenant for life, it only applies so long as the land remains "settled land" and does not prohibit dealings with the life interest. Now that a "settlement" ceases when the land becomes subject to a trust for sale: ss. 1 (7), 3 (1); L. P. (Amend.) Act, 1926, Sched., it becomes possible to terminate the "settlement." A surrender by a tenant for life to the person next entitled extinguishes his powers, which become exercisable as if he were dead: S. L. Act, 1925, s. 105; L. P. (Amend.) Act, 1926, Sched. Thus, if the remaindermen are trustees for sale, they can exercise the powers: L. P. Act, 1925, s. 28.

Effect of surrender to person next entitled.

Surrender to remainderman.

(*x*) If the remainder is given to a person absolutely, the surrender must be made to him on the terms that he consents to the land being vested in trustees for sale and directs them to hold the rents, profits or income of investments on trust for the tenant for life for her life.

Agreement to surrender at request of beneficiaries.

(3) The Tenant for Life has, at the request in writing of the persons beneficially interested (subject to her life interest) in the net proceeds of sale of the said properties, and on the terms that the net rents, profits and income shall, during her life, be held on the trusts hereinafter mentioned, agreed to execute such surrender as is hereinafter contained:

NOW THIS DEED WITNESSETH and it is hereby declared as follows:—

Surrender of life interest.

1. In consideration of the premises, the Tenant for Life, As Settlor, hereby surrenders and conveys unto the Executors:

All that the life interest of the Tenant for Life in the properties mentioned in the Schedule hereto,

To the intent that the said life interest shall absolutely merge and be extinguished and that the said properties shall henceforth be held upon trust for sale.

Trusts of income.

2. The Executors or other the trustees or trustee for the time being of the said Will shall, in accordance with the directions for that purpose given to them in writing by the persons beneficially interested as aforesaid, stand possessed of the net rents and profits until sale and of the income of the investments representing the net proceeds of sale which may accrue during the lifetime of the Tenant for Life, Upon trust to pay the same to her during her life, and shall account to her therefor on the same footing as if she had remained tenant for life of the said properties without impeachment of waste.

Assent to be made.

3. The Executors shall forthwith assent to the vesting of the said property in themselves (as trustees of the said Will), Upon trust to sell the same and stand possessed of the net proceeds of sale or other capital money and of the net rents and profits until sale and of the income of all capital money, Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held under the said Will as varied by this deed.

In witness, &c. (*Add Schedule.*)

CHAPTER V.

THE LAW OF CHARITIES.

SECT. I.—*The restrictions imposed by law on dispositions of land for charitable purposes.*(*a*)

Definition of "charity."

Includes all objects recognised as charitable by 43 Eliz. c. 4; viz., relief of the poor, advancement of learning or religion, or any useful public purpose.

CHARITY, in the legal sense of the term, includes all those objects or purposes which are enumerated as charitable in the preamble of the statute 43 Eliz. c. 4,(*b*) or included within the purview of that preamble.(*c*) Charitable purposes under this preamble may be grouped as follows :—

(i) For the relief of poverty ;
(ii) For the advancement of education ;
(iii) For the advancement of religion ;
(iv) For other purposes beneficial to the community ;(*d*) though everything which is capable of being brought within any of these heads is not necessarily a charity : *Re Macduff* [1896], 2 Ch. at p. 474.

Statutes of Mortmain.

Mortmain, &c., Acts, 1888 to 1892.

Divers ancient statutes, called the Statutes of Mortmain, prohibited alienations of land to corporate bodies without a licence from the Crown, under pain of forfeiture. Dispositions of land to unincorporate persons in trust for charitable purposes were not within those statutes, but were subjected to restrictions by the Act 9 Geo. 2, c. 36. The law relating to Mortmain is wholly distinct from that relating to charitable uses, though both subjects are dealt with in the Mortmain, &c., Act, 1888. That Act repeals the Statutes of Mortmain and also the Act 9 Geo. 2, c. 36, and the Acts amending it, but its provisions are substantially the same as those of the repealed Acts. The Act of 1888 is amended as regards dispositions by Will and as regards the definition of the word "land" by the Mortmain, &c., Act, 1891, and it is further amended by the Mortmain, &c., Act, 1892.

S. L. Act, 1925, s. 29.

Instrument to be recorded with Charity Commissioners or Board of Education.

Again, the S. L. Act, 1925, s. 29 (4), amends s. 4 of the Act of 1888, by requiring assurances and instruments declaring the charitable uses within that section to be sent to the Charity Commissioners within six months. This takes the place of the requirements respecting attestation and enrolment prescribed by sub-ss. (6) and (9). It corresponds with the provisions

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(*a*) Tudor's Charitable Trusts, 4th ed., 427.

(*b*) This Act is repealed, except as regards the preamble, by the Mortmain, &c., Act, 1888, where the preamble is reproduced.

(*c*) Bourchier-Chilcott on Mortmain, 110 ; Tudor, 4th ed., 36.

(*d*) See *Income Tax Commissioners* v. *Pemsel* [1891], A. C. at p. 583 ; *Re Macduff* [1896], 2 Ch. at p. 466 ; 65 L. J. Ch. 700 ; *Re Drummond* [1914], 2 Ch. 90 ; 83 L. J. Ch. 817 ; also *Re Hummeltenberg* [1923], 1 Ch. 237 ; 92 L. J. Ch. 326 ; and the cases collected in Bourchier-Chilcott on Mortmain, pp. 114, *et seq.*

in the Education Act, 1921, s. 117, requiring instruments relating to educational charities to be sent to the Board. Instruments relating to registered land need not be so recorded.

Power to deal with charity land.

This section (s. 29) must be read by itself; it is not part of the general scheme of the S. L. Act, but was introduced, pending its reproduction in an Act consolidating the Charitable Trusts Acts, with a view to securing that trustees for charitable or public purposes should have power to carry out any reasonable transaction.

The section is, however, part of scheme under which the S. L. Act, 1925, is treated as a General Powers Act in relation to land held by fiduciary owners; it is required to prevent charity land vested in two or more joint tenants from being subjected to a trust for sale by L. P. Act, 1925, s. 36 (1).

Universities and College Estates Act, 1925.

It does not apply to land affected by the Universities, &c., Act, 1925, for that Act sets out the powers, formerly incorporated by reference to the S. L. Acts, 1882 to 1890, together with certain new powers given by the S. L. Act, 1925, which are to be exercisable by certain universities, colleges, &c.

Assurance in mortmain prohibited, except with licence from Crown or by authority of statute.

Part I of the Act of 1888 provides that land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain otherwise than under the authority of a licence from the Crown or of a statute for the time being in force, and that if any land is assured otherwise than as aforesaid, the same shall be forfeited to the Crown, subject to certain reservations in favour of a mesne lord. The Crown is expressly empowered to grant licences to assure and acquire lands in mortmain. The prohibition does not extend to leases for a term less than 100 years: Tudor, 4th ed., 429.

Conditions under which assurances may be made to charitable uses.

Part II of the Act of 1888 relates to charitable uses. Section 4, as amended by the Act of 1891, provided that, subject to the exceptions contained in the Act, every assurance otherwise than by Will (e) of land,(f) or of personal estate to be laid out in the purchase of land, to or for the benefit of any charitable use, must be made in accordance with the following requirements:—

The assurance must take effect in possession immediately from its making. It must be irrevocable without any reservation or provision for the benefit of the assuror. It may, however, contain grants or reservations of a peppercorn or other nominal rent, of mines or minerals, or of any easements, covenants and provisions in regard to buildings, streets or roads, drainage or nuisances, a right of entry on non-payment of rent or breach of covenant and other like stipulations. On a sale for full and valuable consideration (*g*) the consideration may consist wholly or partly of a rent, rentcharge, or other annual payment, with or without a right of re-entry for non-payment. Except in the case of stock in the public funds, the assurance must be by deed and must be recorded within six months (as regards educational charities) pursuant to Ed. Act, 1921, s. 117, and as regards other charities pursuant to S. L. Act, 1925, s. 29 (4). Further, unless the assurance has been made for full and valuable consideration, it must be made at least twelve months (*h*) before the death of the assuror, unless it is an assurance of stock in the public funds, in which case the stock must be transferred at least six months before the death of the assuror.

(e) Act of 1891, s. 5; *Re Hume* [1895], 1 Ch. 422; 64 L. J. Ch. 267.

(f) "Land" includes tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land: Act of 1891, s. 3; Tudor, 4th ed., 448.

Omission to record may be remedied.

Where there has been an omission to record a deed within the proper time, the Commissioners have power to extend the time.

Assurances for a public park, elementary school, or public museum are exempted from Act.

Section 6 of the Act of 1888 provides that Parts I and II of the Act shall not apply to an assurance by deed of land for the purposes only of a public park,(*i*) a school-house (*j*) for an elementary school,(*k*) or a public museum,(*l*) but save in the

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(*g*) For the meaning of "full and valuable consideration," see s. 10.

(*h*) The period is not extended, as regards death duties, to three years by the Fin. (1909-10) Act, 1910; see proviso at end of s. 59 (1).

Park.

(*i*) "Public park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public.

School-house.

(*j*) "School-house" includes the teacher's dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school. The devise of a school-house for the purposes of an elementary school was exempted by the Education Act, 1902, s. 23; and see Bourchier-Chilcott, 58. Section 117 of the Education Act, 1921, exempts gifts of land or of personal estate to be laid out in purchase of land for educational purposes from all restrictions of law imposed by the Mortmain and Charitable Uses Act, 1888; this applies whether the gift took effect before or after 1921, but the Will or other assurance must be sent to the Office of the Board of Education as soon as may be after execution, or in the case of a gift by Will after the death of the testator to be recorded in the books of the Board: *ib.*, sub-s. (2).

Elementary school.

(*k*) "Elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments (in respect of the instruction) from each scholar exceed ninepence a week.

Museum.

(*l*) "Public museum" includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, case of a gift for educational purposes (*m*) a deed containing such assurance, made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after its execution. Section 1 of the Mortmain, &c., Act, 1892, extends s. 6 of the Act of 1888 to assurances by deed to any local authority for any purpose for which such local authority is empowered by Parliament to acquire land, and dispenses with the provisions as to execution at least twelve months before the death of the assuror. A local authority may obtain leave from the Lord Chancellor to act as a trust corporation in regard to charitable trusts: L. P. (Amend.) Act, 1926, s. 3.

Local authorities.

Assurances for certain universities, colleges and societies exempted.

Under s. 7 Part II does not apply to assurances for the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges of those universities, or to the colleges of Eton, Winchester, and Westminster, or to Keble College.(*n*) Nor to assurances, otherwise than by Will, to trustees of any society for religious purposes, or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres to erect a building for such purposes, provided the assurance is made for full and valuable consideration.

Exempted assurances may, if thought fit, be recorded.

Trustees of any assurance to which this section applies may cause such assurance to be recorded with the Charity Commissioners.

All other statutory exemptions preserved.

All statutory exemptions from the Mortmain Acts which were in force at the time of the passing of the Act of 1888 are saved and kept in force by s. 8: Tudor, 4th ed., 470. The following are examples:—

Gifts and sales to Queen Anne's Bounty or Ecclesiastical Commissioners.

1. Gifts and sales may be made by deed recorded, or by Will to the Governors of Queen Anne's Bounty for the augmentation of the maintenance of the poor clergy,(*o*) or to the Ecclesiastical Commissioners for the endowment or augmentation of the income of ministers or perpetual curates of new district churches, or for providing a district church or chapel.(*p*)

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together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connexion therewith.

(*m*) See note (*j*), *supra*.

(*n*) See, too, the Public Schools Act, 1869, s. 2; Tudor, 4th ed., 469.

(*o*) 2 & 3 Anne, c. 20, s. 4; Queen Anne's Bounty Acts, 1803, s. 1; 1838, s. 20. The statute 27 Hen. 8, c. 16, has been repealed: L. P. (Amend.) Act, 1924, 10th Sch., and see L. P. Act, 1925, s. 51.

(*p*) The New Parishes Acts, 1843, s. 22; 1844, s. 11; the Parsonages Act, 1865, s. 4.

Gifts for erecting churches, &c.

2. Gifts may be made by deed recorded, or by Will (such deed or Will being executed three months at least before the donor's death), of land not exceeding five acres, or of goods and chattels not exceeding £500 in value, for erecting, rebuilding, repairing, purchasing, or providing any church or chapel where the rites of the Church of England are observed, or any house for the residence of the officiating minister of any such church or chapel, or any churchyard or glebe for the same.(q) The Gifts for Churches Act, 1803, does not extend to a married woman whose disability is not removed by the M. W. P. Act, 1882: *Re Smith* (1887), 35 Ch. D. 589; 56 L. J. Ch. 726.

Endowments under Church Building Acts.

3. Endowments under the Church Building Acts (r) consisting of or arising out of lands or other hereditaments, or money to be laid out in lands or other hereditaments for the purposes of a site for any church or chapel, churchyard, parsonage house or glebe, or for the use or benefit of any church or chapel, or of the incumbent or minister thereof, or for the repairs thereof, are exempted from the Statutes of Mortmain, except where the endowment exceeds the annual value of £300.(s)

School sites, &c.

4. Under the School Sites Acts, 1841 to 1852, the Literary and Scientific Institutions Act, 1854, the Consecration of Churchyards Acts, 1867, and the Places of Worship Sites Acts, 1873 and 1882, a tenant in fee simple, or in tail, or for life, may convey by way of gift, sale or exchange, a limited quantity of land:—

(i) As a site for a school (t) for the education of poor persons or for the education or board of masters or mistresses of elementary schools, or the residence of the schoolmaster or schoolmistress, or otherwise for the education of such poor persons in religious and useful knowledge.

Literary and scientific institutions. 17 & 18 Vict. c. 112.

(ii) For any institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.(*u*)

(q) The Gifts for Churches Act, 1803, s. 1; *Re Vaughan* (1886), 33 Ch. D. 187; *Re Douglas* [1905], 1 Ch. 279; 74 L. J. Ch. 196, which decides that the restriction as to £500 is repealed by Mortmain, &c., Act, 1891, s. 7; Tudor, 4th ed., 776.

(r) For these Acts, see Short Titles Act, 1896.

(s) Church Building Acts, 1840, ss. 2, 3, 17; and 1851, s. 8.

Reverter.

(t) Land granted under the School Sites Act, 1841, reverts to the grantor, on ceasing to be used for the purposes of the Act. For what are such purposes, see *A.-G.* v. *Shadwell* [1910], 1 Ch. 92; 79 L. J. Ch. 113; and see *A.-G.* v. *Price* [1912], 1 Ch. 667; 81 L. J. Ch. 317; though the legal estate may revert, it remains a legal estate: L. P. Act, 1925, s. 7 (1).

Enlargement of churchyards.

(iii) For the enlargement of any churchyard: *Clegg* v. *Metcalfe* [1914], 1 Ch. 808; 83 L. J. Ch. 743.

30 & 31 Vict. c. 133.

Places of religious worship. 36 & 37 Vict. c. 50; 45 & 46 Vict. c. 21.

Under School Sites and other Acts enrolment is not dispensed with.

(iv) As a site for a church, chapel, meeting house, or other place of divine worship, or for the residence of a minister officiating in such place of divine worship, or in any place of worship within one mile of such site, or for a burial place; subject, however, to certain conditions prescribed by the Acts as regards conveyances by a tenant for life. The above Acts provide that only one witness to the execution of the deed shall be necessary, and that the deed is to be valid, although the owner or grantor may die within twelve months, but they do not dispense with the obligation to record the deed.

Assurances within School Sites and other Acts, and also within s. 6 of Act of 1888.

An assurance made under the Acts mentioned in paragraph 4, *supra*, which is also an assurance falling within s. 6 of the Act of 1888, need not be enrolled in the Central Office, nor, having regard to s. 8, need it, if voluntary, be executed twelve months before the grantor's death. But unless made for full and valuable consideration, it should be recorded in the books of the Charity Commissioners or Board of Education. Sites given for elementary schools are exempted by the Education Act, 1902, s. 23 (5).

Recreation grounds. 22 Vict. c. 27.

5. Under the Recreation Grounds Act, 1859, ss. 1 and 2, any land may be lawfully conveyed by deed to trustees to be held by them as open public grounds for the resort and recreation of adults and as playgrounds for children and youths, or either of such purposes; and it is expressly provided that the deed need not be enrolled, and that it will be valid, though the donor may die within twelve months.(*v*) And under the same Act, s. 7, personal property not exceeding £1,000 may be bequeathed to defray the expense of purchasing, &c., ground for the aforesaid purposes.(*w*)

Assurances for working class

Parts I and II of the Act of 1888 do not apply to assurances by deed of land or of money to be laid out in land for the purpose

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(*u*) A billiard room is not within the Act; see *Re Badger* [1905], 1 Ch. 568; 74 L. J. Ch. 327.

(*v*) It will be observed that the necessity for two witnesses was not expressly dispensed with, but see now S. L. Act, 1925, s. 29 (4).

Open spaces.

(*w*) See Open Spaces Act, 1906, s. 3, as to power for trustees to transfer open spaces to a local authority.

of providing dwellings for the working classes in populous places within the meaning of the Working Classes Dwellings Acts, 1890: *Re Sutton* [1901], 2 Ch. 640; 70 L. J. Ch. 747, or to assurances of land for the purposes of the Technical and Industrial Institutions Act, 1892: *Re Stanley* (1910), 26 T. L. R. 365, but every such assurance must be recorded in the books of the Charity Commissioners.

dwellings and technical education exempt. 53 & 54 Vict. c. 16; 55 & 56 Vict. c. 29.

A Parochial Church Council has power to require land to be vested in the Diocesan authority: Paro. Ch. Councils (Powers) Measure, 1921, s. 5.

Conveyances on sale to a charity must be recorded.

In cases not coming within any statutory exemption, a conveyance of land by way of sale to trustees for a charitable purpose must be recorded, though the purchase-money is derived from the sale of land previously in mortmain: *Ex p. Christ's Hospital* (1864), 10 L. T. 262.

Adaptation of Act to registered land.

As regards registered land, the Act of 1888, s. 9, provided that any assurance required to be made by deed might be made by a registered disposition under the Land Transfer Act, 1875, or any Act amending the same, and any assurance so made need not be executed in the presence of two witnesses, nor be enrolled in the Central Office.(*x*)

Under the Land Registration Act, 1925, s. 98, the official trustee of charity lands will be registered as proprietor, where the legal estate is vested in him, though the power to dispose of the land may be vested in the managing trustees. The registration of title to land belonging to a benefice is provided for by s. 99, while the registration of the title of a county council or borough council to small holdings is provided for by s. 71.

Glebe land.

Small holdings.

Additional powers for tenants for life, statutory owners, trustees for sale, and personal representatives to grant or demise land for charitable or public purposes.

Water rights may be granted to statutory bodies under S. L. Act, 1925, s. 54; land may be granted or demised for the charitable or public purposes mentioned in s. 55, subject to the limits imposed by that section; streets and open spaces may be provided or dedicated to the public under s. 56, and for these purposes a tenant for life can dedicate land as if he were an absolute owner; land may be provided for small dwellings, small holdings and dwellings for the working classes under s. 57. Though a tenant for life is a trustee, he can, at his own expense, erect dwellings for the working classes on the settled land with the previous approval in writing of the trustees, and

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(*x*) As to the registration of title of charity land: L. R. Rules, 1925, rr. 60–62; and of small holdings: *ib.*, r. 63.

this will not be deemed an injury to the remainderman: s. 107 (2). All the above powers are exercisable by trustees for sale; L. P. Act, 1925, s. 28, and by personal representatives: Ad. of E. Act, 1925, s. 39. The object of the above powers generally is to place the tenant for life, &c., in the position of an absolute owner to do what is best for the development and improvement of the settled land, not to exempt the disposition from the requirements of the Act of 1888, as modified by the Ed. Act, 1921, s. 117, or by the S. L. Act, 1925, s. 29 (4).

Trustees under a void charity deed may acquire title by the Limitation Acts.

A deed (not within the exemptions) which does not comply with the requirements of the Act of 1888 (as modified or amended) is absolutely void, not only as to the creation of the trusts, but also as to the conveyance of the legal estate. If, therefore, the trustees of the charity enter into possession and remain in possession for twelve years, they acquire a good title under the Limitation Acts.(y)

Sect. II.—*The powers and duties of trustees as regards the management of charity property.*

Endowed charities.

Charitable Trusts Acts.

The powers and duties of trustees as regards the management of charity property are in the main regulated, in the case of endowed charities (with certain exceptions), by the Charitable Trusts Acts, 1853 to 1894.

Charity Commissioners constituted.

By the Act of 1853, s. 1, a board is constituted called "The Charity Commissioners for England and Wales" (s. 3), which board is empowered to give advice and directions in all matters relating to the management or administration of any charity, and the trustees acting on such advice or directions will be deemed to have acted in accordance with the trust: s. 16; Tudor, 4th ed., 515.

Board may authorise leases, mortgages, sales, &c.

The board may authorise leases for building and mining purposes, repairs and improvements, the raising of money by mortgage for any such purpose, and sales and exchanges of charity land,(z) and legal proceedings relating thereto.(a) These

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(y) *Churcher* v. *Martin* (1889), 42 Ch. D. 312; 58 L. J. Ch. 586; *Re Lacy* [1899], 2 Ch. 149; 68 L. J. Ch. 488.

(z) Sections 21, 24; and see s. 26 and the Act of 1855, s. 38. The power to authorise a sale is not affected by the Allotment Extension Act, 1882; *Sutton Parish* to *Church* (1884), 26 Ch. D. 173; 53 L. J. Ch. 599.

(a) Section 17. An action to enforce a common law right is not within the section: *Holme* v. *Guy* (1877), 5 Ch. D. 901; 46 L. J. Ch. 648; Tudor, 4th ed., 518.

Additional powers by reference to S. L. Act. powers are extended by S. L. Act, 1925, s. 29; they are exercisable subject to such consents or orders being obtained as would have been requisite, if the powers had been conferred by the instrument creating the trust; where a dealing is to be effected for less than the best price or rent or gratuitously or any interest in land is to be acquired, the same consent or order is requisite as if the transaction were a sale: *ib.*, s. 29 (2). The jurisdiction of the court, Charity Commissioners, Board of Education or other competent authority is not affected: *ib.*, s. 29 (3).

Official trustee. By the Act of 1855, s. 15, the secretary is constituted a corporation sole by the title of "The official trustee of charity lands," and charity lands may be vested in him by an order of court: Act of 1853, s. 48, or the Charity Commissioners: Act of 1860, s. 2; and see Act of 1887, s. 5, and thereupon such property vests in the official trustee and his successors without any conveyance: Act of 1853, s. 48; L. P. Act, 1925, s. 9.

It is not the practice of the Commissioners to allow active duties to be given to the official trustee. He holds lands vested in him as a bare trustee: Act of 1853, s. 50, and it seems doubtful whether there is jurisdiction under the section to make an order giving him any active duties: Tudor, 4th ed., 550. Though he is a bare trustee a legal estate vested in him on 1st January, 1926, is not taken out of him: L. P. Act, 1925, 1st Sch., Pt. II, para. 7 (k).

Official trustees of charitable funds. By s. 4 of the Act of 1887, such officers of the Commissioners as they with the approval of the Treasury appoint are the official trustees of charitable funds. They have perpetual succession and may hold stocks, securities and money, which devolve on their successors without any transfer or assignment: Charitable Trusts Act, 1855, s. 18.

Educational charities. In the case of educational charities the Board of Education stands in the place of the Charity Commissioners. The provisions of the Mort. & Charitable Uses Acts, 1888 and 1891, in respect of an assurance of land to a charity, as defined by s. 10 of the Act of 1888, do not apply in respect to any assurance for a purpose connected with the Education Act, 1921, whether or not the assurance was made before the passing of that Act. Instead of enrolment such assurances will be entered in the books of the Board of Education: Ed. Act, 1921, s. 117.

Restriction on sales, mortgages, leases, &c., by trustees. The Act of 1855, s. 29, provides that no sale, mortgage, or charge of the charity estate, and no lease in reversion after more than three years of any existing term, or for life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years, shall be granted by the trustees of any charity otherwise than with the express authority of Parliament or of a court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Commissioners. A lease granted without such authority is absolutely void.(b) A deed or charter founding a charity is not a scheme within the meaning of s. 29, and trustees cannot sell without the leave of the Commissioners.(c) In this respect the transactions authorised by S. L. Act, 1925, s. 29, take effect as if they had been authorised by the instrument creating the trust, but that section does not impose a fetter on dealings by charity trustees where the charity is not within the jurisdiction of the Commissioners or the Board of Education. No lease for lives would be authorised, it would not create a legal term. Leases for lives are converted into terms of ninety years terminable by notice on either side after the dropping of the life: L. P. Act, 1925, s. 149 (6).

Leases for lives.

Small Holdings, &c., Act, 1908.

Under the Small Holdings and Allotments Act, 1908, s. 33, trustees within the meaning of the Allotments Extension Act, 1882, may sell or let land with the leave of the Commissioners or the Board of Education.

Who may appoint and remove trustees.

Under the Act of 1860, s. 2, the Commissioners may make orders for the appointment or removal of trustees of a charity, and the jurisdiction of the Commissioners is extended to the appointment or removal of trustees of places of religious worship or certain lands and buildings held upon the same or like trusts as the place of worship: Acts of 1869, s. 15; 1894, s. 4. Notice of the Commissioners' intention to make the order need only be given to such of the trustees as are not privy to the application: Acts of 1860, s. 3; 1869, s. 4, and a month's public notice of the proposal to appoint or remove the trustees must be given: Act of 1860, s. 4, but no order is to be made where the gross annual income of the charity amounts to £50 or upwards, except upon the written application of the trustees, or a majority of them, or, in the case of incorporated trustees, under their common seal: Act of 1860, s. 4. Where such application has been made it cannot be withdrawn.(*d*)

(b) *Bishop of Bangor* v. *Parry* [1891], 2 Q. B. 277; 60 L. J. Q. B. 646. Lease of land held on charitable, ecclesiastical or public trusts cannot be validated: L. P. Act, 1925, s. 152 (7).

(c) *Re Mason's Orphanage* [1896], 1 Ch. 596; 65 L. J. Ch. 439; *A.-G.* v. *National Hospital* [1904], 2 Ch. 252; 73 L. J. Ch. 677.

Accounts.

The trustees of any charity within the jurisdiction of the Commissioners are bound to render certain accounts to them annually: Act of 1855, s. 44. If arrangements could be made, when a list of a charity's investments is sent, for the Commissioners to make suggestions as to what changes of investment are expedient, this would go a long way towards reconciling donors and their trustees to the jurisdiction of the Commissioners.

Advice as to investments.

Efforts to escape from jurisdiction.

There can be no question that for many years past efforts have been made to escape from the jurisdiction which has been considered irksome and expensive. Whether rightly or wrongly, the Commissioners have been regarded as mere inquisitors, whose sole duty is to see that no breaches of trust, whether merely technical or otherwise, are committed, without any regard to the spirit of the trust or a change in circumstances, though the making of new schemes has undoubtedly given new life to charities which would otherwise have become moribund. In recent years a distinct improvement has been noticeable in the general attitude; if once it is recognised that the policy of the Commissioners is to give all the assistance in their power to the carrying on of trusts without imposing unnecessary burdens and delay in regard to details, their jurisdiction would be welcomed.

Majority of acting trustees may grant leases of land vested in official trustee.

Where lands are vested in the official trustee, the acting trustees of the charity, or the majority of them (such majority not being less than three), may grant such leases of the land as they might have granted if the same were legally vested in themselves: Act of 1855, s. 16.

Majority of trustees may execute assurances.

The Act of 1869, s. 12, provides that where the trustees, acting in the administration of any charity, have power to determine on any sale, exchange, mortgage, or lease, or other disposition of any property, a majority of those trustees who are present at a meeting duly constituted, and vote on the question, may execute and do all assurances and things for carrying into effect such sale, &c., and such assurances, &c., have the same effect as if they were executed by all the trustees and the official trustee of charity lands.(*e*)

(*d*) *Re Bethnal Green Poor Lands* [1891], 3 Ch. 400; 60 L. J. Ch. 742.

(*e*) Generally, as to the power of the majority of trustees to bind the minority, see Lewin, 12th ed., 290–1; *Re Whiteley* [1910], 1 Ch. 600; 79 L. J. Ch. 405.

The power for the majority to convey or create a legal estate is recognised in S. L. Act, 1925, s. 29 (5), but they will be expressed to convey in the names of the persons (including the official trustee of charity lands) in whom the estate is vested.

Exemptions from Acts.

The Acts do not extend to the Universities of Oxford, Cambridge, London or Durham: Act of 1853, s. 62, or to Eton or Winchester: Act of 1855, s. 49, or to any cathedral or collegiate church,(*f*) or any building registered as a place of meeting for religious worship, and used in good faith as such,(*g*) or to certain lands and buildings certified by the Commissioners to be appurtenant to or held upon the same or like trusts as the building registered,(*h*) or to the Governors of Queen Anne's Bounty, the British Museum, or to any friendly or benefit society, or savings bank, or any institution, &c., for religious or other charitable purposes, wholly maintained by voluntary contributions. The Act of 1853, s. 62,(*i*) also provides that where any charity is maintained partly by voluntary contributions and partly by means of income arising from any endowment, the Act shall apply only to the income from endowment, and that no donation or bequest to or in trust for any such charity as last aforesaid, of which no special application is directed, and which may be legally applied by the governing or managing body as income in aid of voluntary subscriptions, shall be subject to the jurisdiction of the Commissioners; and that no portion of any such donation, &c., or of any voluntary subscription which is set apart and invested by the governing body for the purpose of some defined and specific object or purpose in pursuance of any rule or resolution made or adopted by the governing body, shall be subject to the jurisdiction of the board. It also exempts the funds of missionary societies.

Voluntary contributions.

Mixed charities.

Gift applicable as income.

Construction of s. 62 of Charitable Trusts Act, 1853.

Under s. 62, income of any endowment *primâ facie* means income derived from any invested funds. In the case of a charity maintained partly by voluntary subscriptions, and partly by the income of any endowment, donations and bequests for the

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(*f*) *Re St. John's Street Chapel* [1893], 2 Ch. at p. 631; 62 L. J. Ch. 927; and see *Re Dod's Charity* [1905], 1 Ch. 442; 74 L. J. Ch. 260.

(*g*) Act of 1853, s. 62; Places of Worship Registration Act, 1855, s. 9. It is understood that the Commissioners, in practice, treat as exempt from their jurisdiction any building registered as a place of worship whether used as such or not, and any building used for such purpose, whether registered or not.

(*h*) Charitable Trusts (Places of Religious Worship) Act, 1894, s. 4.

(*i*) See 26 L. Q. R. 146. As to what are or are not "mixed charities," see Articles by Mr. Withers, in 1924, 69 Sol. J., pp. 133 to 135, 155, 156, 170 to 172, 188 to 190.

general purposes of a charity, the capital whereof may lawfully be applied as income consistently with the terms of the gift, are exempt from the jurisdiction of the Commissioners. Such gifts and the income thereof are not brought within the jurisdiction by being invested by the governing body in securities, or in the purchase of land; accordingly land purchased with money so given may be sold by the trustees without the consent of the Commissioners.(*j*)

Temporary investments of property applicable as income.

The Act extends to "any cathedral, collegiate, chapter, or other schools," but this only means schools *ejusdem generis*. It does not include a ragged school, which will be exempt *quâ* school, but will come under the operation of the Act if not wholly maintained by voluntary subscriptions and income from endowment, but partly by Government and public grants.(*k*)

Exempted charities may on application be brought within Acts.

The trustees of any exempted charity may apply to the board to have the Charitable Trusts Acts, or any provisions thereof specified in the application, extended to that charity.(*l*)

In cases not within Acts jurisdiction remains with Chancery Division.

The powers of the trustees of any charity not within the above Acts depend on the terms of the charter or trust deed by which it is founded; if these are defective resort can be had to the Chancery Division to supply the defect, so far as this may not have been remedied by S. L. Act, 1925, s. 29.

Transfer of jurisdiction over educational endowments to Board of Education.

Under the Board of Education Act, 1899, and Orders in Council made in pursuance thereof, the jurisdiction of the Commissioners over educational endowments is transferred to the Board of Education except as to the department of the official trustee of charity lands and the official trustees of charitable funds.(*m*)

Mixed charities.

(*j*) *Re Clergy Orphan Corpn.* [1894], 3 Ch. 145; 64 L. J. Ch. 66; *Re Harding* (1905), 92 L. T. 641; *Re Church Army* (1906), 75 L. J. Ch. 467; *A.-G.* v. *Mathieson* [1907], 2 Ch. 383; 76 L. J. Ch. 682; *Re Society for Training Teachers of the Deaf* [1907], 2 Ch. 486; 76 L. J. Ch. 656; *Re Wesleyan Chapel* [1909], 1 Ch. 454; 78 L. J. Ch. 414; *Re Orphan Working School* [1912], 2 Ch. 167; 81 L. J. Ch. 627; Tudor, 4th ed., 558–66. The original foundation of a charity is not a "voluntary contribution" within the exception in s. 62 of the C. T. Act, 1853; *Re Richard Murray Hospital* [1914], 2 Ch. 713; 84 L. J. Ch. 184. Similarly in order to come within the description of a "mixed charity," in that section the charity must be rightly so described at the time of the assurance of the land in question: *Re Child Villiers* [1922], 1 Ch. 394; in this case all the previous authorities were reviewed; see also the Articles on this case in (1924) 69 Sol. J. 133, 155, 170, 188. For other recent cases: *Re Howard Street Congregational Chapel* [1913], 2 Ch. 690; *A.-G.* v. *Foundling Hospital* [1914], 2 Ch. 154; 83 L. J. Ch. 673; *Re Shakespeare Memorial Trust* [1923], 2 Ch. 398; 92 L. J. Ch. 551.

(*k*) *Re Stockport Ragged, &c., Schools* [1898], 2 Ch. 687; 68 L. J. Ch. 41; *Re Society for Training Teachers of the Deaf, supra.*

(*l*) Act of 1869, s. 14. As to the mode of application, see s. 5.

(*m*) *Re Betton's Charity* [1908], 1 Ch. 205; 77 L. J. Ch. 193; *Re Berkhamsted Grammar School* [1908], 2 Ch. 25; 77 L. J. Ch. 571; Tudor, 4th ed., 769.

DIVISION VIII.

(PRECEDENTS) CHARITIES.(*a*)

No. Ia.

VOLUNTARY CONVEYANCE *of* Freeholds *on* Trust *for* Sale *where the proceeds of sale are settled by a* Deed *of even date upon Trusts for a* Charity.(*b*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B. (hereinafter called the Settlor), of, &c., of the one part, and G. H., of, &c., K. L., of, &c., M. N., of, &c., and P. Q., of, &c. (hereinafter called the Trustees), of the other part :

Seisin of freeholds and desire to convey the same.

Whereas the Settlor is seised in fee simple in possession free from incumbrances of the freehold property hereinafter described and is desirous of conveying the same to the Trustees upon the trusts hereinafter declared :

(*a*) For Precedents of conveyances by trustees of a charity, see Vol. I.

Objects of scheme.

(*b*) The objects of the scheme effected by Precs. I and II are as follows:—

By Prec. I the land is conveyed upon trust for sale, and the trusts in favour of the charity are kept off the title. It is assumed that, at the date of the conveyance, the charity is either "mixed" or supported solely by voluntary contributions. This scheme will not be adopted when the land is required as a permanent endowment to be administered under the direction of the Charity Commissioners.

By Prec. II the proceeds of sale as well as the rents and profits until sale are made applicable for the general purposes of the charity. The fact that capital as well as income is made applicable for the general purposes ousts the jurisdiction of the Commissioners, if the charity is at the date of the conveyance a mixed charity or one wholly supported by voluntary contributions : *Re Church Army* (1906), 75 L. J. Ch. 467 ; *Re Child Villiers* [1922], 1 Ch. 394 ; 91 L. J. Ch. 473, and articles thereon in (1924), 69 Sol. J. 133, 155, 170 and 188.

Where land used for purposes of the charity.

The judgment of Cozens-Hardy, M.R., in *A.-G.* v. *Mathieson* [1907], 2 Ch. 383, raises doubts whether land which is actually used for the purposes of the charity, as opposed to an investment, can be exempted from the jurisdiction of the Commissioners by this scheme, but in that case the proceeds of sale of the land could not have been applied as income ; see *ib.*, p. 394.

Enrolment.

Under the Mortmain and Charitable Uses Act, 1888, s. 4 (9), where charitable uses are declared by a separate instrument, it was not necessary to enrol the conveyance, but only the declaration of trusts. Hence, it will not be necessary to record Prec. I, but Prec. II must be recorded in the books of the Commissioners pursuant to S. L. Act, 1925, s. 29 (4).

Stamp.

Where, as in the above cases, the conveyance is voluntary, *ad valorem* stamp duty on the value of the land will be payable under Fin. (1909-10) Act, 1910, s. 74, and the stamp must be adjudicated.

NOW THIS DEED WITNESSETH as follows :—

Operative part.

Conveyance of freeholds.

1. FOR effectuating the aforesaid desire and in consideration of the premises, the Settlor (*c*) hereby conveys unto the Trustees:

Parcels.

ALL THAT, &c.,(*d*)

Habendum.

TO HOLD unto the Trustees in fee simple, Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

Trust for sale with power to postpone.

2. THE Trustees shall stand possessed of the premises, UPON TRUST to sell the same or any part thereof, with full power at their absolute discretion to postpone any such sale.(*e*)

Proceeds of sale to be held on trusts of deed of even date.

3. THE Trustees shall stand possessed of the net money to arise from any such sale (after payment thereout of all costs incidental thereto) and any other capital arising under the powers conferred on the Trustees, and also of the rents and profits of the premises until sale, Upon the trusts and subject to the powers and provisions declared concerning the same by a Deed already prepared and intended to bear even date herewith and to be made between the same persons as the parties hereto and in the same order and to be executed immediately after this conveyance.(*f*)

[Additional powers.]

[4. *Add any additional powers required beyond those conferred by L. P. Act*, 1925, *s.* 28, *by reference to the S. L. Act*, 1925.]

Power to appoint new trustees.

5. THE Settlor during his life shall have power to appoint new trustees hereof, and after his death the statutory power shall apply. (*The power to appoint new trustees should correspond with the power contained in the Declaration of Trust of the proceeds of sale.*(*g*))

(*c*) No covenants for title should be given in this case.

Registered land.

(*d*) Where the settlor is registered under the L. R. Act, 1925, the trust for sale may be declared by the deed declaring the trusts of the proceeds of sale, for the register keeps the trust off the title, see Instrument of Transfer, Prec. Ic, *infra.*

Variation where the land is purchased.

(*e*) If the transaction is a purchase and part of the purchase-money is to be raised on mortgage of the land, then the first trust will be to execute the intended mortgage and to stand possessed of the right of redemption on trust for sale, and see next Precedent. Trustees are not responsible for any loss for postponing a sale: L. P. Act, 1925, s. 25 (2). The conveyance to joint tenants does not in the case of charity land create a trust for sale under L. P. Act, 1925, s. 36 (1), for the land is treated as "settled land": S. L. Act, 1925, s. 29.

(*f*) See Prec. II, *infra.* This does not bring the settlement on the title. The trust for sale continues in favour of a purchaser till the land is conveyed to or by the directions of the persons entitled to the proceeds: L. P. Act, 1925, s. 23. In the case of trustees for sale holding the proceeds for charitable purposes the number of trustees may exceed four: T. Act, 1925, s. 34 (3) (b), but where it is desired, as in this case, not to disclose the fact that the trustees hold the proceeds for charitable purposes, it is not expedient that there should be more than four trustees.

(*g*) When new trustees are appointed of the declaration of trust, the same persons must be appointed to be trustees of this deed, but the appointments

[6. *If the property does not exceed £500 in value, add a certificate to that effect and that the transaction does not form part of another transaction or series of transactions.*]

IN WITNESS, &c.

No. IB.

CONVEYANCE *on* SALE *of* FREEHOLDS *to the* TRUSTEES *of a* CHARITABLE INSTITUTION *on* TRUST *for* SALE, *the purchase-money having been provided out of money held by the Trustees on the trusts of Prec.* II.(*h*). *Variation where part of the money is to be raised by* MORTGAGE. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Purchasers), of the other part: WHEREAS:—

Seisin and agreement for sale.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the freehold property hereinafter described, and has agreed to sell the same to the Purchasers for a like estate free from incumbrances at the price of £——:

Mode of conveyance.

(2) The Purchasers have requested the Vendor to convey the said property in manner and upon the trusts hereinafter appearing:

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers:

Parcels.

ALL THOSE, &c.,

Habendum.

TO HOLD unto the Purchasers in fee simple, Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same (that is to say):—

Trust for sale with power to postpone.

2. THE Purchasers (*continue as in Para.* 2 *of last Precedent, saying* "(hereinafter called the Trustees)," *or if part of the*

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must be effected by separate instruments: L. P. Act, 1925, s. 24; T. Act, 1925, s. 35. The powers of appointing new trustees and making vesting declarations conferred by the T. Act, 1925, apply to charities: *Re Coates to Parsons* (1886), 34 Ch. D. 370; 56 L. J. Ch. 242; Tudor, 4th ed., 323.

(*h*) See notes to last Precedent, if the purchase-money does not exceed £500 the usual certificate (see Vol. I) must be added that the Conveyance does not form part of a series of transactions.

purchase-money is to be raised by mortgage, say "The Purchasers (hereinafter called the Trustees) shall stand possessed of the premises, UPON TRUST in the first place to execute the Charge by way of Legal Mortgage the short particulars of which are contained in the —— Schedule hereto, and subject thereto shall stand possessed of the right of redemption in the premises, UPON TRUST to sell, &c." *Continue as in clause* 2 *of last Precedent*).

Variation trust to raise money.

3. (*As in last Precedent, but if money is to be raised by mortgage add after the words* "after payment thereout" *the words* "of all money owing on the security of the said Mortgage and of all costs incidental to the sale.")

4 and 5. (*As in last Precedent.*)

IN WITNESS, &c.

[THE SCHEDULE.

Particulars of the Charge by way of Legal Mortgage intended to be executed.

Deed made between, &c., for securing £—— and interest thereon at the rate of £—— per cent. per annum.]

No. Ic.

INSTRUMENT *of* TRANSFER *to accompany Prec.* IB *where the land is* REGISTERED *under the* LAND REGISTRATION ACT, 1925, *and is to be placed in the names of* TRUSTEES.(*i*)

Instrument of transfer of registered land to trustees of a charity.

H.M. Land Registry.
Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

(*Date*) IN consideration of —— pounds (£——), paid to me

(*i*) Where registered land is given to a charity or purchased by the trustees of a charity, and the land is to be held by the trustees of the charity on trust for sale, the trust for sale and of the proceeds being declared by a deed of even date in the form of Prec. II, the land should be transferred to the trustees by an instrument of transfer in the prescribed form so as to make them registered proprietors. There need be no separate conveyance on trust for sale, but that trust may be declared (Prec. No. II, *infra*) by the deed whereby the trusts of the proceeds of sale are declared. The register keeps the trusts off the title without the aid of a separate conveyance on trust for sale. The trustees of the charity will be entitled to be registered as proprietors of the land without the entry on the register of any restrictions on their right to deal with the land: *Re Wesleyan Chapel* [1909], 1 Ch. 454; 78 L. J. Ch. 414, save the restriction (Form No. 9 in the Rules) as to payment of capital to not less than two trustees. It is assumed that the charity is either "mixed" or supported solely by voluntary contributions.

Registration under L. R. Act where land conveyed to charity.

(the receipt of which sum is hereby acknowledged), I, A. B.,(*j*) of, &c. (*Vendor or Donor*), As Beneficial Owner, hereby transfer (*k*) to C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*Trustees*), the land comprised in the title above referred to [*or* edged red on the plan hereto (being part of the land comprised in the title above referred to)].

Signed, Sealed and Delivered by the said A. B. in the presence of } Signature of A. B. (Seal.)

No. II.

DECLARATION *of* TRUST *of* PROCEEDS *of* SALE *of* FREEHOLDS *conveyed by Prec.* IA *and of* MONEY SUBSCRIBED *for the benefit of a* CHARITY. (*Equitable Interests.*)

Parties.

THIS DECLARATION OF TRUST is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Settlor), of the one part, and G. H., of, &c., K. L., of, &c., M. N., of, &c., and P. Q., of, &c. (hereinafter called the Trustees), of the other part (*l*): WHEREAS :—

Recitals. The charitable institution.

(1) An unincorporated charitable institution, known as —— (hereinafter called the Charity), was founded in the year —— to provide for the needs and recreation of the poor residing in the neighbourhood of —— :

Charity unendowed.

(2) The Charity is wholly maintained by voluntary contributions and has no endowment, and the control of the funds and the management of the Charity are in the hands of a Governing Body consisting of the Settlor and other persons interested in the work of the Charity (hereinafter together referred to as the Governing Body) :

Meeting of charity to adopt proposed trusts.

(3) At a meeting of the Governing Body, held on the —— day of ——, at which the Settlor presided as Chairman, it was resolved—

(i) That the Trustees should be the trustees of the Charity for the purpose of holding any real or personal property from

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Variations for voluntary transfer.

(*j*) Where the land is given by a donor the form will commence with the words "I, A. B.," and the words "As Beneficial Owner" will be omitted, but at the end of the Precedent the following words "and we, the said C. D., E. F. and G. H., accept such transfer," should be added.

Covenants for title.

(*k*) As to the effect of implied covenants for title: L. R. Rules, 1925, rr. 76, 77; and as to execution by attorney: *ib.*, r. 82.

(*l*) See notes to Prec. IA, *supra*. This deed must be recorded in the books of the Charity Commissioners within six months: S. L. Act, 1925, s. 29 (4).

time to time belonging to the Charity, which should from time to time, with the consent or by the direction of the Governing Body, be vested in them as such trustees;

(ii) That a Conveyance in the form of the draft produced at the meeting (being the draft of the Conveyance bearing even date herewith hereinafter mentioned) should be executed by the Settlor and the Trustees for the purpose of giving effect to the desires of the Settlor with regard to the freehold property intended to be thereby conveyed;

(iii) That a Trust Deed should be executed by the parties hereto in the form of the draft produced at the meeting (being the draft of this Deed) for the purpose of declaring the trusts of the proceeds of sale of the said property of a sum of £——, then in the hands of the Governing Body, representing subscriptions received by them on behalf of the Charity for general purposes and applicable as income, and of any other money which might from time to time be or become payable to the Trustees on behalf of the Charity; and

(iv) That the execution of the Trust Deed (meaning this Deed) by the Settlor should be conclusive evidence that the said resolution had been carried out in every respect in accordance with the requirements of the Governing Body:

Conveyance of even date.

(4) By a Conveyance bearing even date herewith,(*m*) and made between the Settlor of the one part, and the Trustees of the other part, the Settlor conveyed certain property at ——, in the county of ——, unto the Trustees in fee simple, Upon Trust to sell the same, and to stand possessed of the net proceeds of sale, and any other capital money arising under their statutory powers, and also of the rents and profits of the said property until sale, Upon the trusts declared concerning the same by a Deed of even date therewith therein referred to (meaning this Deed):

Agreement to execute declaration of trust.

(5) For the purpose of giving effect to the wishes of the Settlor in connexion with the Charity and to the aforesaid resolution, the Settlor and the Trustees have agreed to execute such declaration of trust as hereinafter appearing:

(*m*) See Prec. IA, *supra*. If the title of the land is registered then the Instrument of Transfer (Prec. IC) will be recited and the first trust in clause 1 will be to hold the land on trust for sale.

Powers of trustees for sale.

For the powers conferred on trustees for sale by reference to the S. L. Act, *see* L. P. Act, 1925, s. 28; the powers conferred by S. L. Act, 1925, s. 29, do not apply when the land is held on trust for sale. But the provision in sub-s. (4) relating to recording of assurances is of general application.

NOW, pursuant to the said agreement and resolution, THIS DEED WITNESSETH and it is hereby agreed as follows :—

Proceeds of sale, &c., to be applied for general purposes.

1. THE Settlor hereby directs and the Trustees hereby declare and do agree with the Settlor that the Trustees shall and will stand possessed of the net money to arise from any sale of the said property under the trust for sale contained in the recited conveyance of even date herewith, and of any other capital money which may arise on the exercise of their statutory or other powers, and of any other money which may from time to time be received by the Trustees under the directions of the Governing Body, and whether such money shall arise from subscriptions, donations, bequests, or from any other source, and also of any investments for the time being representing the same (hereinafter called the Trust Fund), and also of the rents and profits of the said property until sale, and of any other income derived from the Trust Fund (hereinafter referred to as the income of the Trust Fund), UPON TRUST (subject only to the express conditions imposed by any donor) primarily to apply both the capital (*n*) and income of the Trust Fund for the general purposes of the Charity in such manner as the Governing Body shall from time to time at their meetings direct.

Definition of "Trust Fund."

2. WITHOUT prejudice to the primary trust hereinbefore declared, the Trustees may, with the consent of the Governing Body, apply the income alone of the Trust Fund or any part of such income for the general purposes of the Charity, and in particular for any of the following purposes (that is to say) :—

Management.

(1) In the payment of all rents, rates, taxes, costs of insurance, repairs, and other outgoings payable from time to time in respect of any property of the Charity, including all expenses incurred in the exercise of the powers conferred on the Trustees by the recited Conveyance of even date herewith, or by any conveyance of interests in land hereafter acquired, or any of them, or by this Deed :

[Other purposes.]

[(2) *Add here any other purposes, such as acquiring land, which may be thought suitable in the particular case.*(*o*)]

Fund applicable as income.

(*n*) As the capital is made primarily applicable as income for the general purposes of the charity, the trust fund will be exempt from the jurisdiction of the Charity Commissioners. Under clause 2 the trustees are given power, without prejudice to the trusts contained in clause 1, to apply the income alone for the general purposes of the charity.

(*o*) Any capital arising from land held on trust for sale may be laid out in the purchase of other land to be held on trust for sale: L. P. Act, 1925, s. 28.

(3) For such other purposes (whether similar to those hereinbefore mentioned or not) in connexion with the Charity as the Governing Body may from time to time direct.

General purposes.

3. THE following provisions shall have effect with respect to any land acquired or to be acquired [under any statutory provision or the provisions hereinbefore contained or] under any disposition of any testator, settlor, or other benefactor, but subject to any conditions imposed by him namely :—

Provisions with regard to land acquired by the Charity.

(1) Any land or interest in land so acquired shall be conveyed or assigned to or otherwise vested in the Trustees UPON TRUST to sell the same or any part thereof, with power at discretion to postpone the sale for any period without being liable to account for the exercise of such discretion: Provided that where the title to the land is registered under the Land Registration Act, 1925, such land shall become subject to a trust for sale by virtue of this deed :

Land so acquired to be conveyed to Trustees on trust for sale.

(2) The Trustees shall have and may exercise in reference to any lands held on trust for sale and for the time being subject to the trusts hereof (including the lands comprised in the said Conveyance of even date herewith), the following additional powers, namely—

Additional powers in respect of land held on trust for sale.

(i) Power to (*set out any additional powers required which are not given by the Settled Land Act as made applicable by the Law of Property Act,* 1925, *s.* 28) ;

(ii) The said powers shall in any disposition on trust for sale be expressed to be conferred upon the trustees thereof :

Provided that in the case of land registered under the Land Registration Act, 1925, the land may be transferred to the trustees simply free from any restriction or inhibition save the usual restriction applicable to land held on trust for sale :

(3) Every conveyance or assurance to the Trustees on trust for sale of any land hereafter to be acquired shall nominate the Settlor during his life as the person to appoint new trustees of the disposition on trust for sale, and after his death the statutory power shall apply and shall be exercised in accordance with the directions of the Governing Body, but no reference to the Governing Body shall be made in any conveyance on trust for sale :(*p*)

Provision relating to the appointment of new Trustees of conveyances on trust for sale.

(*p*) The persons who are trustees of the declaration of trust must be appointed trustees of conveyances on trust for sale : T. Act, 1925, s. 35 (1).

Mortgages for the purpose of raising money for acquiring land.

(4) Where any money is required to be raised by mortgage for acquiring any land, the same may be conveyed on trust to raise the money and the costs of raising the same by a charge by way of legal mortgage and subject thereto on trust for sale as aforesaid:

Trusts of proceeds of sale of real estate and of rents and profits thereof until sale.

(5) The Trustees shall stand possessed of the net money to arise from sales under any such trust for sale as aforesaid, and any capital money arising under their statutory or other powers (after payment thereout of all mortgage money charged thereon and all costs incidental thereto) and also of the net rents and profits (after payment of costs of repairs, insurance, and other outgoings) of any land so acquired as aforesaid until sale Upon the trusts and subject to the powers and provisions hereby declared concerning the Trust Fund and the income of the Trust Fund, and so that the same may be applied accordingly:

As to the occupation of land by the Charity.

(6) The Trustees may—

(i) If the Governing Body shall so direct, permit any lands, with or without buildings, which, or the proceeds of sale whereof, are for the time being subject to the trusts hereof and remain unsold, to be occupied or used for the purposes of the Charity or for any purposes connected therewith for such periods, and whether free or at a rent, and on such terms generally as the Governing Body shall think fit; and

(ii) If the Charity shall become a corporate body, and if in the opinion of the Governing Body or of any managing committee of such body any such lands or buildings shall be permanently required for the purposes of the Charity, the Trustees may convey or assign or cause the same to be conveyed, assigned, or otherwise vested in the Charity or in the Official Trustee of Charity Lands as part of the corporate property of the Charity, and every such conveyance or other disposition as last aforesaid shall operate to discharge the premises affected from the trust for sale, and the Trustees shall not be liable to see to the application of or dealings with such premises, but shall thenceforth be free from all liability in respect thereof.

Power to raise money.

4. The Trustees may from time to time, at the request of the Governing Body, raise any money required by the Governing Body on the security of any property subject to the trusts hereof

for the general purposes of the Charity or otherwise, and make arrangements with respect to any subsisting incumbrances in such manner as they shall think fit, and the provisions of section seventy-one of the Settled Land Act, 1925, shall apply for the purposes of any such mortgage, and no mortgagee shall be concerned to see that the Governing Body have requested the loan to be made or as to the application of the money or whether the money is wanted or that no more than is wanted is raised.

All contributions to be applicable both as to capital and income for the general purposes.

5. EVERY contribution to the Charity, whether by way of subscription, donation, devise, bequest or otherwise, shall (subject only to the express provisions of the gift), be deemed applicable both as to the capital and income thereof for the general purposes of the Charity.

Trusts of Trust Fund on cesser of Charity.

6. IF at any time hereafter the Charity shall cease to exist (q) the capital and the income of the Trust Fund shall be applied for such charitable purposes and in such manner generally as the Trustees shall direct.

Investment clause.

7. ANY part of the capital or the income of the Trust Fund which may not for the time being be immediately required for the purposes of the Charity or any of the purposes aforesaid and until so required may be invested by the Trustees in any of the following investments which the Governing Body may select, with power at the request of the Governing Body to vary such investments for others of a like nature. (*For Investment Clauses, see Settlements* (*Personal*)—*Form No.* 51, *p.* 152, *supra, or Wills* (*Personal*)—*Form No.* 74, *p.* 732, *supra.*)

Power to retain unauthorised investments.

8. SUBJECT to any directions by the Governing Body the Trustees may, if they think fit and without being liable to account for the exercise of such discretion, retain any investments (provided they do not involve any liability for calls) or other property, real or personal, which may from time to time be devised, given or bequeathed to the Charity, though not being investments or property authorised to be acquired hereunder or may disclaim any such property, and may accept and retain or refuse any new shares, Stock, Debentures, or Debenture Stock in any Company which may be allotted to them in respect of any investments retained as aforesaid, and may discharge any liabilities affecting leasehold or other property of a wasting

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(q) See *Re Barrett's Trust* (1910), 26 T. L. R. 330.

nature, and the Trustees shall not be liable for any loss which may occur by reason of any such retainer, acceptance, or refusal.

[Other provisions as to financial matters, &c.] [9. *Add here any provisions relating to Banking Accounts, the signing of cheques, and providing a fireproof box for the safe custody of documents, and to any other matters which the particular case may require.*]

Keeping of accounts. 10. THE Trustees shall keep true accounts of all money received and expended in respect of the Charity, and of the matters in respect of which such receipt and expenditure takes place, and of the property for the time being vested in them, and of all liabilities in connexion therewith (but so that it shall not be obligatory upon the Trustees to keep separate accounts of capital and income), and once at least in every year such accounts, together with a balance sheet, shall be examined, audited and certified by such persons, whether professional auditors or not (not being trustees hereof or a solicitor who or whose partner acts as solicitor to the trust), as the Governing Body shall from time to time appoint.

Indemnity. 11. *Indemnity to Trustees—Form No.* 62, *Settlements* (*Personal*), *p.* 163.

Appointment of new trustees. 12. (1) THE Settlor during his life shall have power to appoint new trustees hereof and after his death the statutory power shall apply:

(2) The Governing Body shall, by resolution to be entered in their minute book and to be signed by their Chairman, have power to nominate the persons to be appointed new trustees hereof, and the person in whom the statutory power is vested (including the Settlor during his life) shall by deed appoint the persons so nominated to act as new trustees hereof:

(3) Any deed executed by the Settlor or other person in whom the statutory power is vested shall in favour of a purchaser or other person acquiring any interest for money's worth be deemed to have been executed in accordance with the resolutions of the Governing Body, and shall be taken to be valid in all respects unless and until amended by any subsequent deed or unless he has actual notice of any fraud or wrong doing:

(4) Not more than four trustees (being individuals) shall act for the purposes hereof, and, save where a trust corporation is acting, the number required for giving valid receipts for capital shall not be less than two.(*r*)

(*r*) Where land is held on trust for sale it is better to negative T. Act, 1925, s. 34 (3) (b), which takes the case out of the general rule.

[*Add any provisions as to minutes, and as to votes at meetings, and as to the framing and altering of rules which may be desired.*]

IN WITNESS, &c.(*s*)

No. IIIA.

CONVEYANCE (*t*) *of* COTTAGES *to* TRUSTEES *to be used as* ALMSHOUSES.(*u*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE made, &c., BETWEEN A. B., of, &c. (hereinafter called the Settlor), of the one part and The Rev. C. D., the present Rector of the Parish of P——, in the County of ——, and E. F. and G. H., both of P—— aforesaid, Farmers, the present churchwardens of the said Parish (which three persons are hereinafter called the Trustees), of the other part: WITNESSETH and it is hereby declared as follows :—

1. THE Settlor hereby conveys (*v*) unto the Trustees :

Conveyance of cottages.

ALL THOSE six cottages, or almshouses, now being erected by the Settlor on land belonging to him, situated in the Parish of P—— aforesaid, and adjoining the road leading from —— to ——, and the garden ground or land belonging to and adjoining the said cottages, all of which premises contain together ——, or thereabouts, and are delineated on the plan hereto, and thereon coloured pink,

Trust to permit same to be used as almshouses, subject to regulations.

TO HOLD unto the Trustees, in fee simple, UPON TRUST to permit the premises to be for ever hereafter occupied by aged or infirm persons, inhabitants of the said Parish of P——,

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(*s*) See that the deed is recorded within six months with the Commissioners pursuant to S. L. Act, 1925, s. 29 (4).

(*t*) If it is desired that the property be exempt from the jurisdiction of the Charity Commissioners it should be conveyed on trust for sale as in Prec. IA, *supra*, the trusts of the proceeds of sale being declared by a deed of even date framed on the model of Prec. II, p. 888.

(*u*) This deed must be recorded with the Commissioners within six months : S. L. Act, 1925, s. 29 (4). If the donor dies within twelve months the deed will be void, and it is therefore suggested that he should make a codicil to his Will, confirming the deed in the event of his death within this period. For the form of such a devise, *see* Wills (Personal), Form No. 35, p. 694, *supra*.

Course to be pursued to vest lands in official trustee.

(*v*) Where it is wished, in order to save the expense of the conveyance, which would otherwise be necessary on every change of trustees, to vest the legal estate in charity lands in the official trustee, it is not proper for the founder of the charity to convey it in the first instance to the official trustee ; he should convey it to the acting trustees appointed by himself, and when thus clothed with the charitable trust it may be vested in the official trustee by an order of the Charity Commissioners made on the application of the trustees.

subject to the rules, regulations and provisions hereinafter contained, for the administration and management of the Charity intended to be hereby established.

Management trustees.

2. THE Charity shall be under the sole management and control of the following persons as trustees (that is to say): the P—— Court Trustee for the time being as hereinafter defined, the Rector for the time being of the Parish of P——, and the churchwardens for the time being of the said Parish (all of which persons are hereinafter collectively called the Managers).

Definition of P—— Court Trustee.

3. (1) THE owner for the time being of the capital messuage called P—— Court, or other the principal mansion house which shall for the time being be standing on the land now known as the P—— Court Estate, or on any land which may hereafter be added to and form part of the P—— Court Estate, shall be the P—— Court Trustee, provided that such owner shall be of full age and shall be residing at such mansion house as aforesaid, or elsewhere in the Parish of P——, or within —— miles of such Parish:

(2) If the said mansion house shall at any time be settled, the tenant for life or statutory owner shall be deemed to be the owner thereof:

(3) If there shall at any time be two or more tenants for life or statutory owners, or if the said mansion house shall be vested in two or more trustees for sale or personal representatives, they shall select one of their number to be the P—— Court Trustee.

If no P—— Court Trustee, rector and church-wardens to be sole trustees.

4. IF at any time there shall be no duly qualified P—— Court Trustee, or such trustee being duly qualified shall be unable or unwilling to act, the Rector and churchwardens for the time being of the said Parish shall for such time act as the sole Managers of the Charity.

Appointment of first managers.

5. IN accordance with the aforesaid provisions, the Settlor and the Trustees are hereby constituted the first Managers of the Charity, and the Trustees shall respectively cease to be Managers if and when they shall respectively cease to be Rector and churchwardens of the said Parish.

Legal estate may be transferred to official trustee of charity lands.

6. THE Trustees shall upon every occasion when it shall be necessary to transfer the legal estate in the premises, and they may at any time if they think fit, apply to the Charity Commissioners for an order vesting the legal estate in the Official Trustee of Charity Lands or for an order authorising the legal estate to be conveyed to such Trustee.

7. (1) THE Managers shall from time to time elect to be inmates of the cottages such aged or infirm persons, inhabitants of the said Parish of P——, as the Managers shall consider most deserving objects of the Charity:

Who are to be inmates.

(2) Such inmates may be of either sex, and may be either married or single:

(3) No able-bodied person shall be elected, and no inmate shall, without the express permission of the Managers, be allowed to have any person, whether a member of his or her family, or any other person, to live with him or her in the almshouses: it being the intention of the founder of the Charity to provide a home for deserving aged or infirm persons who might otherwise be compelled to end their days in the union workhouse or other like institution.

8. No person shall be ineligible or considered a less deserving object of the Charity by reason of his or her religious opinions, or of receiving an old age or other pension.

No person to be ineligible on account of religious opinions.

9. THE inmates of the almshouses shall be permitted to use the gardens attached thereto, subject to such rules and regulations as the Managers may from time to time prescribe.

Inmates to have use of gardens.

10. THE Managers may impose on the inmates of the almshouses such small rent as the Managers may from time to time think necessary or proper for the purpose of paying for the necessary repairs of the houses, or for insuring the same against loss or damage by fire, or for defraying any expenses which may be incurred in or about the management and administration of the Charity, or as evidence of the title of the Trustees, but subject as aforesaid no rent or other payment shall be required from the inmates.

Small rent may be imposed on inmates for certain purposes.

11. THE Managers may make and alter rules as to the conduct of the inmates, and may at any time expel or remove any inmate either for misconduct, or because, in the opinion of the Managers, he or she is no longer a proper object of the charity, or for any other reason, by giving to him or her at least one month's notice for that purpose.

Managers may make rules, and may expel any inmate by giving a month's notice.

12. THE election of inmates of the houses, and all other business of the Charity, shall take place and be transacted at ordinary or special meetings of the Managers.

Business to be conducted at meetings.

13. THERE shall be one ordinary meeting of the Managers held in each year for transacting the general business of the Charity, and such ordinary meeting shall be held on some convenient day to be appointed by the Managers.

An ordinary meeting to be held each year.

Special meetings may be called by any two Managers by notice.

14. (1) ANY two of the Managers may call a special meeting by sending to each of the other Managers through the post at least twenty-one days' previous notice of such meeting, stating the time and place of holding the same, and the objects or purposes for which it is to be held :

(2) The provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to all notices to be served hereunder.

Place of meetings.

15. ALL meetings of the Managers shall be held either at P—— Court aforesaid, or at the Rectory, or at such other convenient place within the Parish of P——, as shall be agreed on by the Managers, or named in the notice convening such meeting.

Three managers to be a quorum.

16. THREE Managers present at a meeting shall form a quorum.

Chairman of meetings.

17. AT every meeting of the Managers the P—— Court Trustee (if present), or if the P—— Court Trustee be absent, then the Rector of the Parish, shall be the chairman of the meeting.

Voting.

18. THE election of the inmates of the cottages, and all other business brought before any meeting, shall be decided by a majority of votes of the Managers present ; and in case of an equality of votes, the chairman of the meeting shall have a casting vote.

Minutes to be kept.

19. MINUTES of the proceedings of every meeting of the Managers shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting, or of the following meeting, when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting.

Managers may make bye-laws.

20. THE Managers may from time to time make such rules and bye-laws in relation to the conduct of the business of the Charity not inconsistent with the main objects of the foundation as they may think fit or may apply to the Charity Commissioners for a scheme to be made for governing the Charity.

Indemnity to trustees.

21. THE Trustees (including the Official Trustee of Charity Lands if the legal estate is vested in him) shall not be liable for giving effect to the directions of the Managers.

Powers of managers.

22. (1) THE Managers (as the managing trustees) shall have the powers conferred by section twenty-nine of the Settled Land Act, 1925, on a committee of management.

(2) The Managers may appoint, employ and pay stewards, matrons and other persons in connexion with the carrying on of the Charity, and may dismiss such persons on such terms as the Managers may think fit.

IN WITNESS, &c.

No. IIIB.

DEED *creating a* MONEY ENDOWMENT (*w*) *for the* ALMSHOUSES *established by last* PRECEDENT.

Parties.

THIS DECLARATION OF TRUST is made, &c. (*date*), BETWEEN (*parties as in last Precedent*): WHEREAS:—

Grant of almshouses to trustees.

(1) The Settlor, by a Conveyance bearing even date with and made between the same parties as are parties hereto (duly recorded with the Charity Commissioners), conveyed six cottages at, &c., to the Trustees in fee simple Upon trust to permit the same to be for ever thereafter occupied by aged and infirm inhabitants of the said Parish of P——, subject to the rules, regulations, and provisions therein contained for the administration and management of the said Charity: And the said Conveyance contained provisions constituting Managers from time to time of the Charity (hereinafter called the Managers):

Transfer by donor of stock into names of trustees.

(2) The Settlor has caused the sum of £—— Stock to be transferred into the names of the Trustees for the purposes hereinafter expressed:

Declaration of trust of stock.

NOW THIS DEED WITNESSETH and it is hereby declared as follows:—

1. THE Settlor hereby directs and the Trustees hereby agree that they shall and will stand possessed of the said sum of £—— Stock, or other the investments for the time being representing the same (hereinafter called the Trust Fund), IN TRUST for ever hereafter for the purposes hereinafter mentioned.

Trustees of almshouses to be trustees of stock.

2. THE Trustees (being the trustees for the time being of the Charity established by the recited Conveyance) shall act also as the trustees hereof and shall account to the Managers for the income of the Trust Fund and shall vary investments and do

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(*w*) See notes to last Precedent. If the stock is not of the class which under the Mortmain, &c., Act, 1888, did not involve enrolment at the Central Office, see that this deed is recorded within six months with the Commissioners.

all such acts and things as may be required by the Managers without being responsible for giving effect to such directions and in particular shall give orders from time to time for all dividends and other income to be paid to the account of the Managers at their bankers.

Income to be applied for repairs and insurance of almshouses.

3. THE Managers shall for ever hereafter receive the income of the Trust Fund, and shall thereout, in the first place, keep the almshouses established by the said Conveyance insured against loss or damage by fire, in the names of the Trustees, in such an amount as the Managers shall think sufficient; and shall in the next place, out of the said income, keep the said almshouses in good and substantial repair: And the Managers shall lay out all money (if any) which may from time to time be received by virtue of any such insurance as aforesaid, in or towards rebuilding and reinstating the said almshouses, or such part thereof as shall or may be burnt down or damaged by fire.

Managers may apply any surplus in their hands above a certain sum for benefit of inmates.

4. IF and when the Managers shall have in their hands a sum of money arising from the income of the Trust Fund not required for the purposes aforesaid, exceeding in amount the sum of £——, the Managers may, if they think fit, apply the whole or any part of such surplus for the benefit of the inmates for the time being of the said almshouses, or any of such inmates, in such manner as they may think proper or may temporarily invest the same in the names or under the control of the Trustees in any investments for the time being authorised as investments for trust money to provide a sinking fund for rebuilding or other purposes connected with the said almshouses.

Funds may be transferred to Official Trustees.

5. THE Trustees shall, if and when it shall be necessary to transfer the Trust Fund or any part thereof, and may at any other time, if they think fit, apply to the Charity Commissioners for an order directing the transfer thereof and any other investments and policies for the time being subject to the trusts hereof to the Official Trustees of Charitable Funds IN TRUST for the said Charity, and upon any such order being obtained the Trust Fund or such part thereof as it may be necessary to transfer shall be transferred accordingly.

Managers' duties.

6. THE Managers shall be the Managing Trustees of the Charity hereby constituted.

IN WITNESS, &c.

No. IIIc.

INSTRUMENT *for same purpose as Prec.* IIIA, *where* LAND *is* REGISTERED.(*x*)

(*Heading as in Prec.* Ic, *p.* 887.)

(*Date.*) I, A. B., of, &c. (*donor*) hereby transfer to myself and C. D., of, &c., E. F., of, &c., and G. H., of, &c. [*being the first managing trustees*], the land comprised in the title above referred to [*or* shown and edged with red on the accompanying plan (being part of the land comprised in the title above referred to)] for the purposes of almshouses for aged and infirm persons, inhabitants of the said Parish of ——, subject to the rules and regulations mentioned in the Schedule hereto (*y*) [*or* a deed of even date herewith, a copy of which is filed at the Land Registry].(*z*)

(THE SCHEDULE.)

(*Execution and attestation.*)

No. IVA.

GIFT *of* LAND *to the* GOVERNORS *of* QUEEN ANNE'S BOUNTY *as a site for a* PARSONAGE HOUSE *under the Parsonages Act*, 1865.(*a*) (*Legal Estate.*)

I, A. B., of, &c. (*donor*), do this —— day of ——, hereby freely Conveyance.

(*x*) See L. R. Rules, 1925, rr. 60–62, 122–24, 128, 129, and Forms Nos. 12 and 36.

This deed need not be enrolled in the Central Office, nor are two witnesses necessary: Mortmain, &c., Act, 1888, s. 9; nor need it be recorded with the Charity Commissioners: S. L. Act, 1925, s. 29 (4). It will save costs if an order is obtained from them vesting the land in the Official Trustee of Charity Lands, to enable him to be registered proprietor at once. Restriction No. 12 (in the Schedule to the Rules) will be entered against the title.

(*y*) If the registrar refuses (which is unlikely) to allow the rules and regulations to be inserted in the transfer, there must be a contemporaneous (unregistered) deed containing them. The instrument of transfer must be executed in duplicate, one part to be handed to the registrar and the other retained by the trustees.

(*z*) If it is desired that the property be exempt from the jurisdiction of the Charity Commissioners, the ordinary simple form of transfer, as in Prec. Ic, should be used. There will then be a trust for sale off the register in the deed declaring the trusts of the proceeds. As to the charitable, ecclesiastical and public purposes for which a tenant for life, statutory owner, trustees for sale and personal representatives may convey or demise land: S. L. Act, 1925, s. 55; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

(*a*) 28 & 29 Vict. c. 69, s. 4. It is apprehended that a conveyance under this Act does not require to be recorded under S. L. Act, 1925, s. 29, with the and voluntarily, and without any valuable consideration, grant and convey to the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy,

Parcels. ALL THAT, &c. (*Describe land, which must not exceed one acre*),

Habendum. TO HOLD unto the said Governors, their successors and assigns, to be used as a site for a parsonage or residence for the incumbent for the time being of the Parish of ——, and for the garden and appurtenances thereto.

AND I DECLARE that I have not at any time assured any land other than that hereby conveyed for the purpose aforesaid.

IN WITNESS, &c.

No. IVB.

INSTRUMENT *for same purpose as last Precedent where* LAND *is* REGISTERED.(*b*)

(*Heading as in Prec.* IC, *p.* 887.)

(*Date.*) PURSUANT to the Parsonages Act, 1865, I, A. B., of, &c., hereby transfer to the Governors of Queen Anne's Bounty for the augmentation of the maintenance of the poor clergy, the land, &c., as a site for a parsonage or residence for the minister or incumbent for the time being of the Parish of ——, and for the garden and appurtenances thereto; And I hereby declare that no land other than that hereby transferred has been assured by me for the purpose aforesaid.

(*Execution and attestation.*)

Commissioners, where the land conveyed does not exceed one acre, but the Governors may cause it to be so recorded if they think fit: Queen Anne's Bounty Act, 1838, s. 23.

In the case of a sale under this Act no stamp is necessary, see s. 3, incorporating s. 15 of the Clergy Residences Repair Act, 1776. Formerly, if the sale was by a tenant for life, s. 71 of the Lands Clauses Consolidation Act, 1845, applied, and the purchase-money had to be paid to two trustees; but title would now be made under the S. L. Act, 1925.

Special statutory modes of making title are preserved by L. P. Act, 1925, s. 7 (3) (c).

Successors. The word "successors" is no longer required to pass the fee simple to a corporation sole: *ib.*, s. 60.

(*b*) See notes to Prec. IIIc, p. 901, *supra*.

No. Va.

CONVEYANCE *to the* Ecclesiastical Commissioners *under the* New Parishes Acts.(*c*) (*Legal Estate.*)

Conveyance.

I, A. B., of, &c., under the authority of the New Parishes Acts, 1843 and 1844, do this —— day of —— 19—, by these presents freely and voluntarily, and without any valuable consideration, give, grant and convey to the Ecclesiastical Commissioners for England,

All, &c. (*Describe land*),

To hold to the said Commissioners and their successors for the purpose of, &c. (*Describe the particular purpose, being some purpose within the provisions of the Acts.*)

In witness, &c.

No. Vb.

INSTRUMENT *for same purpose as last Precedent where* Land *is* Registered.(*d*)

(*Heading as in Prec.* Ic, *p.* 887.)

(*Date.*) Pursuant to the New Parishes Acts, 1843 and 1844, I, A. B., of, &c., hereby transfer to the Ecclesiastical Commissioners for England the land, &c., for the purposes of, &c. (*state purpose*).

(*Execution and attestation.*)

(*c*) 6 & 7 Vict. c. 37, s. 22; 7 & 8 Vict. c. 94, s. 11. The deed need no longer be enrolled in the Central Office under 27 Hen. 8, c. 16, for that Act has been repealed: L. P. (Amend.) Act, 1924, 10th Sch.

Church Building Acts, 1818 to 1884.

If the land is conveyed as a site for a new church under the Church Building Acts instead of under the New Parishes Acts, the conveyance will be in the form prescribed by 3 Geo. 4, c. 72, s. 2, except that the Acts, instead of being separately cited, may be referred to as "The Church Building Acts, 1818 to 1884."

If the grant is by way of endowment, the conveyance must be made to the incumbent of the church which is to be endowed: New Parishes Act, 1856, s. 23, and the Act of 1843. The Act of 1843 also extends the powers to ecclesiastical and collegiate corporations.

(*d*) See notes to Prec. IIIc, *supra*, and L. R. Rules, 1925, rr. 125–27, Forms 40–42 in the schedule to the Rules; also notes to last Precedent.

No. VIa.

CONVEYANCE *of* LAND *as a site for a* CHURCH *of* ENGLAND SCHOOL *under the* SCHOOL SITES ACT, 1841.(*e*) (*Legal Estate.*)

Conveyance of land to minister and church-wardens.

UNDER the authority of the School Sites Act, 1841, I, A. B., of, &c. (*grantor*), hereby freely and voluntarily and without any valuable consideration [*or* hereby in consideration of the sum of £—— paid to me, the receipt of which is hereby acknowledged, and As Beneficial Owner] grant and convey unto The Reverend C. D., the Rector of the Parish of ——, and E. F., of, &c., and G. H., of, &c., the churchwardens of the said Parish.(*f*)

ALL, &c. (*Describe land*),(*g*)

As a site for a school for poor persons.

TO HOLD unto the said rector and churchwardens, and their successors, for the purposes of the said Act, and to be applied as a site for a school (*h*) for poor persons and for the residence of the master [*or* mistress] of the said school and for no other purpose whatsoever.(*i*)

(*e*) See s. 10, under which attestation by one witness to the execution by each party is made sufficient. Where a deed is recorded under S. L. Act, 1925, s. 29 (4), with the Commissioners or with the Board of Education under Ed. Act, 1921, s. 117, it is not necessary to have two witnesses. As the terms of the deed do not require the school to be an elementary one as defined in s. 6 of the Mortmain, &c., Act, 1888, although it will probably be used as such, the deed should be recorded with the Board of Education as soon as may be under Ed. Act, 1921, s. 117. If it came within the meaning of the Ed. Act, 1902, s. 23 (5), as a gift of a school-house, it would be exempt.

If it is wished to obtain a grant from the National Society, it will be necessary to use the special form of conveyance which they require, and can be obtained at their office.

Minister and church-wardens.

(*f*) Under s. 7 of the School Sites Act, 1841, as qualified by s. 4 of the School Sites Act, 1844, the minister and churchwardens are a *quasi* corporation for this purpose only.

(*g*) If the grant is by a *limited* owner the land must not exceed one acre: s. 2; an *absolute* owner may grant any quantity: School Sites Act, 1849, s. 5; see also S. L. Act, 1925, s. 55 (1) (i); L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

(*h*) If it is intended that the school shall never be used except as an elementary school, the words "an elementary school" should be substituted here for "a school."

Reverter.

(*i*) If the school ceases to be used for the purposes specified in the deed, it will revert to the estate of the grantor under s. 2 of the School Sites Act, 1841, though it has been continuously used for other purposes specified in the Act: see *A.-G.* v. *Shadwell* [1910], 1 Ch. 92; 79 L. J. Ch. 113; also *A.-G.* v. *Price* [1912], 1 Ch. 667; 81 L. J. Ch. 317. The estate owners must, where the right is equitable, convey the site to the grantor or the persons deriving title under him when the right of reverter takes effect: L. P. Act, 1925, THE school shall be under the management and control of trustees, subject to the following regulations, namely:—

School to be managed by a committee.

Trustees.

1. (1) THE Trustees of the school shall be the Rector for the time being of the said Parish, and —— other persons (hereinafter called elective Trustees), who must be persons residing in the said parish, or within —— miles therefrom, and members in good faith of the Church of England as by law established:

(2) The following persons, namely (*names and addresses*), shall be the first elective Trustees:

(3) Any elective Trustee may resign his office by a letter to that effect sent to the Rector, and any elective Trustee ceasing to be a member of the Church of England, or to reside as aforesaid, shall cease to be a Trustee:

(4) Any vacancy caused by the death, resignation or disqualification of a Trustee, or from any other cause, shall be filled up at a meeting of the subscribers, to be convened for that purpose as soon as conveniently may be, the day, hour, and place of meeting to be fixed by the Rector, and notice thereof to be affixed to the door of the parish church at least fourteen days before the day of meeting, and no other notice need be given:

(5) Every annual subscriber of 5*s.* and upwards, who shall have paid his subscription for the current year, and every donor of £2 and upwards, may attend and vote at the meeting.

Foundation managers.

2. So long as the school shall be conducted as a public elementary school under the provisions of the Education Acts, 1870 to 1921, the Trustees may from time to time appoint the foundation managers either wholly from their own body, or partly from their own body and partly from outside, as they may think fit, and may from time to time remove any of the foundation managers and appoint others in their place.

Religious instruction.

3. (1) THE education at the school shall include religious instruction which shall be in accordance with the doctrines of the Church of England, and under the superintendence of the Rector or other the officiating minister for the time being of the said Parish, subject to the provisions of any Act of Parliament affecting the same:

Appeal to bishop.

(2) There shall be a right of appeal to the bishop of the diocese

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s. 3 (3). The right of reverter does not prevent the fee simple from being a legal estate: *ib.*, s. 7 (1), and can be registered as an estate contract: L. C. Act, 1925, s. 10, Class C (iv).

as to whether the character of the religious instruction given at the school is or is not in accordance with the provisions hereof:

Fees.

(3) The education may be free, or such fees may be charged as the Trustees or the managers shall think fit.(*j*)

[Separate religious teaching.]

[4. NOTHING herein contained shall preclude the Trustees or the foundation managers from making or consenting to an arrangement for giving reasonable facilities for the instruction of children whose parents desire it in accordance with the principles of any religious body other than the Church of England.]

IN WITNESS, &c.

No. VIB.

INSTRUMENT *for same purposes as last Precedent where* LAND *is* REGISTERED.(*k*)

(*Heading as in Prec.* IC, *p.* 887.)

Transfer to rector and church-wardens.

(*Date.*) PURSUANT to the School Sites Act, 1841, I, A. B., of, &c., hereby transfer to the Reverend C. D., the Rector of the Parish of ——, and E. F., of, &c., and G. H., of, &c., churchwardens of the said Parish, and their successors, the land, &c., as a site for a school [*or* an elementary school] and for the residence of the master [*or* mistress] of the said school and for no other purpose whatsoever; And it is hereby declared that the quantity of land hereby transferred, together with all other land held by the transferees for the same purpose, does not exceed one acre.

(*Execution and attestation.*)

No. VIIA.

CONVEYANCE *of* LAND (*l*) *as a site for a* BUILDING *to be used for* PARISH PURPOSES *in connexion with the* CHURCH *of* ENGLAND.(*m*). (*Legal Estate.*)

Parties.

THIS CONVEYANCE, made, &c., BETWEEN A. B., of, &c.

(*j*) If the school is to be an elementary one within the meaning of s. 6 of the Mortmain, &c., Act, 1888, the amount of the fee must be limited so as not to exceed 9*d*. a week. The conveyance should be recorded with the Charity Commissioners under S. L. Act, 1925, s. 29 (4), unless it comes within Ed. Act, 1921, s. 117, when it should be recorded with the Board of Education, in either case within six months.

(*k*) See notes to Prec. IIIC, p. 901. Where the title to the land is registered it is not necessary to record the transfer with the Commissioners or the Board of Education: S. L. Act, 1925, s. 29 (4); Ed. Act, 1921, s. 117.

(*l*) See notes to Prec. IIIA, p. 895. See also S. L. Act, 1925, s. 55; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

(*m*) This deed must be recorded with the Charity Commissioners within (hereinafter called the Settlor), of the one part, and (*insert the name of the Diocesan Authority, see Parochial Church Councils* (*Powers*) *Measure*, 1921, *s*. 5) (hereinafter called the Trustees), of the other part:

WITNESSETH as follows :—

Conveyance of land to trustees.

1. THE Settlor hereby freely and voluntarily and without any valuable consideration [*or* hereby in consideration of the sum of £—— paid to him by the Trustees (the receipt of which sum the Settlor hereby acknowledges) and As Beneficial Owner] conveys unto the Trustees,

Parcels.

ALL, &c. (*Describe land*),

In trust as a site for a building for following purposes :—

TO HOLD unto the Trustees in fee simple, UPON TRUST to permit the same, and the buildings to be erected thereon, to be used by the Rector for the time being of the Parish of ——, for all or any of the following purposes (*n*) (namely) :—

Celebration of divine service.

(1) For the celebration of divine service in accordance with the rites and ceremonies of the Church of England as by law established :

School.

(2) As a school for the education of poor persons, whether children or adults, resident in or near the said Parish, and for the residence of any teachers employed in such school :

(3) As class or lecture rooms for confirmation classes or for other religious instruction or for secular instruction :

Meeting place for clergy, district visitors, &c.

(4) As a place of meeting for the clergy or for district visitors, scripture readers, and others, carrying on work in concert with the clergy for promoting the spiritual, moral, or social welfare of the poor living in or near the Parish :

Meetings in aid of religious or charitable institutions.

(5) For meetings of local committees of societies or institutions to promote any religious or charitable purpose, or for meetings in aid or for the benefit of any such societies or institutions :

Other charitable work.

(6) For any charitable work or purpose which the Rector may think proper.

Rector or committee appointed by him to have sole management.

2. SUBJECT to the visiting powers hereinafter given, the premises shall be under the management and control of the Rector for the time being of the said Parish, or of a committee of management to be appointed from time to time by the Rector, and the Rector or the committee (as the case may be)

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six months, and unless made for valuable consideration it will be void if the donor dies within twelve months: Mortmain, &c., Act, 1888, s. 4 (6) (7), as amended by S. L. Act, 1925, s. 29 (4).

(*n*) The purposes can be extended or restricted if desired.

shall from time to time direct for which of the purposes hereinbefore mentioned the premises shall be used.

Officiating minister to act for rector in certain cases.

3. If the Rector shall at any time be unable to perform his duties, or there shall be a vacancy in the benefice, the officiating minister for the time being of the Parish shall take the place of the Rector for all the purposes hereof.

Power for Trustees to deal with land.

4. The Trustees may at any time at the request of the Rector for the time being of the said Parish and with the approval of the Charity Commissioners when required by law,(*o*) dispose of and deal with the land in accordance with the provisions of section twenty-nine of the Settled Land Act, 1925, and shall apply the money or rent to arise from any sale, lease, or other disposition, after paying thereout the expenses incidental thereto, either in purchasing or hiring other land or buildings to be used for all or any of the purposes aforesaid, or may expend and apply the same for any other charitable purpose in connexion with the Parish as the Trustees with the consent of the Rector shall think fit; And if any other land or buildings shall be acquired the Trustees shall have the like powers of disposing of the same as are hereinbefore given to them with respect to the premises hereby conveyed.

Statutory power of appointing new trustees.

5. The statutory power of appointing new trustees shall apply to this deed.

Bishop to be visitor.

6. The Bishop of the diocese shall have all the powers of a visitor over the trust premises and over the management and control thereof, and the said Rector or committee, as the case may be, shall in all things pertaining to the said trusts observe and carry out the orders and directions of the visitor.(*p*)

In witness, &c.

No. VIIb.

INSTRUMENT *for same purpose as last Precedent where* Land *is* Registered.(*q*)

(*Heading as in Prec.* Ic, *p.* 887.)

(*Date.*) I, A. B., of, &c. [in consideration of —— pounds

(*o*) This approval is made necessary by the C. T. Act, 1855, s. 29, and cannot be dispensed with by an express provision in the deed: *Re Mason's Orphanage* [1896], 1 Ch. 596; 65 L. J. Ch. 439; and see *A.-G.* v. *National Epileptic Hospital* [1904], 2 Ch. 252; 73 L. J. Ch. 677.

(*p*) If a grant from the National Society is contemplated, inquiry should be made at their office whether they require any particular form of conveyance.

(*q*) See notes to Prec. IIIc, p. 901.

(£——)], hereby transfer to C. D., of, &c., E. F., of, &c., and G. H., of, &c., the land, &c., to be used for the following purposes (namely) :—

(1) For the celebration, &c. (*state purposes as in last Precedent. The provisions as to dealing with the land will not be required ; they are conferred by Settled Land Act*, 1925, *s.* 29, *and the appropriate restriction will be entered accordingly*).

(*Execution and attestation.*)

No. VIII.

CONVEYANCE *of* LAND (*qq*) PURCHASED *as a* SITE *for a* HOSPITAL.(*r*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE, made the —— day of ——, 19—, BETWEEN A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter together called the Donors), of the one part, and the said A. B., C. D., and E. F., of, &c., and G. H., of, &c. (hereinafter together called the Trustees), of the other part : WHEREAS :—

Seisin.

(1) The Donors are seised in fee simple as joint tenants on trust for sale of the freehold property hereinafter described free from incumbrances, and having recently purchased the same with their own money are absolutely entitled to the proceeds of sale [*or* with money subscribed for establishing a hospital express power was conferred on them to execute such a conveyance as is hereinafter contained] :

Trustees are members of a committee appointed to establish hospital.

(2) The Trustees are the members of a committee appointed at a public meeting held at ——, on the —— day of —— last, for the purpose of taking steps to establish a hospital at —— for the treatment of poor persons in sickness :

Agreement by Donors to give site.

(3) The Donors have agreed to give the said property as a site for the said intended hospital, and to convey the same to the Trustees in fee simple, Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same :

(*qq*) See notes to Prec. IIIc, p. 901.

(*r*) If the donors have found the purchase-money between them they must be considered the donors of the site, so that the death of any of them within twelve months would invalidate the charitable trust *pro tanto*. They should each make codicils to confirm the gift. The deed must be recorded with the Commissioners within six months : S. L. Act, 1925, s. 29 (4). For power to grant land for a hospital : *ib.*, s. 55 ; L. P. Act, 1925, s. 28 ; Ad. of E. Act, 1925, s. 39.

Intention to erect buildings.

(4) The Trustees intend to erect on the said property suitable buildings for the said hospital by means of money collected and to be collected for that purpose :

NOW, in consideration of the premises, THIS DEED WITNESSETH and it is hereby declared as follows :—

Donors convey land to Trustees in trust to permit same to be used for hospital.

1. THE Donors hereby convey unto the Trustees :

ALL THAT piece of land, &c. (*referring to Schedule*),

TO HOLD unto the Trustees, in fee simple, UPON TRUST to permit the same, and the buildings to be erected thereon, to be used as a hospital for, &c. (*state objects of hospital*), subject to such rules and regulations as shall for the time being be in force for the management and government thereof, and subject also to the provisions hereinafter contained.

Trustees to frame rules and regulations.

1. (1) THE Trustees, or the majority of them,(*s*) shall, as soon as conveniently may be, frame, or cause to be framed, rules and regulations for the management and government of the said hospital and the funds and property thereof, and shall submit the same to a general meeting of subscribers of £—— or upwards to the funds of the hospital, to be convened by an advertisement published at least fourteen days before the day of meeting, in the —— newspaper, or some other newspaper circulating in the county of —— :

To be submitted to general meeting of subscribers.

(2) The said rules and regulations, if adopted by a majority of the subscribers present and voting thereat, or at an adjourned meeting, shall thenceforth come into force.

Matters to be provided for by rules and regulations.

2. THE said rules and regulations shall include rules for the following (among other) purposes (namely) :—

(1) Rules providing for the holding of general meetings of the governors, and in particular an annual general meeting to be held some time in the month of —— in every year, and defining what amount of donation or annual subscription shall qualify the donor or subscriber to become a governor and to be present and vote at general meetings ;

(2) Rules providing for the appointment of a committee of management to consist partly of *ex officio* members and partly of members to be elected annually at the annual general meeting of governors ;

(3) Rules regulating the proceedings at general meetings, and also at meetings of the committee of management ;

(4) Rules providing for the investment of money not required

(*s*) See *Re Whiteley* [1910], 1 Ch. 600 ; 79 L. J. Ch. 405.

for the immediate purposes of the hospital, and for the keeping and auditing of accounts ; and

(5) A rule providing in what manner and by what authority new rules may be made or existing rules be rescinded or altered.

Trustees to be committee of management until appointment of committee under rules.

3. UNTIL a committee of management shall be appointed under the said rules and regulations, the Trustees shall be the committee of management, with full power to erect and complete, fit up, and furnish the necessary buildings, and to make all such arrangements in relation to the establishment of the said hospital as they shall think fit.

Power for Trustees by direction of committee to deal with land.

4. (1) THE Trustees shall, if and when directed so to do by a resolution of the committee of management, or of a general meeting of governors and (where the law so requires with the approval of the Charity Commissioners), have all such powers of disposing of, and dealing with, the said land as are conferred by section twenty-nine of the Settled Land Act, 1925, and in addition shall have power for the general purposes of the hospital to raise money by way of legal mortgage, and so that no mortgagee shall be concerned to see to the application thereof or whether the Trustees have been directed by resolution or otherwise to raise the same :

(2) All capital money arising on the exercise of any of the said powers shall be added to the general funds of the hospital and be applicable, at the discretion of the committee, either for the purchase of other land or buildings, or for the erection of new or additional buildings, or for repairs, alterations or improvements, or for any other charitable purpose for which the general funds of the hospital shall be applicable under the rules and regulations for the time being in force :

(3) Any net rent received by virtue of any exercise of the said powers shall be treated as part of the general funds of the hospital and be applicable accordingly :

(4) Receipts given by the Trustees or by the Treasurer of the hospital on their behalf shall be valid without showing that the transaction under which the money arises has been authorised by a resolution or otherwise.

Resignation and removal of trustees.

5. ANY present or future trustee hereof may at any time resign the trusteeship by signing a note addressed to the committee expressing his wish to resign, and the committee may at any time remove any trustee from the trusteeship for any reason which may appear to them sufficient and without assigning any reason.

Power to appoint new trustees.

6. (1) WHENEVER there shall be a vacancy in the trusteeship caused by death, resignation, or removal, or any other cause, the committee of management may, by a resolution, nominate one or more trustees to supply the vacancy, and upon any such nomination the number of trustees may be augmented or reduced, provided that the number be never more than four or less than two :

(2) Effect shall be given to every such resolution by a deed executed by the secretary for the time being of the hospital, and for the purposes aforesaid such secretary shall have power to appoint a new trustee or new trustees hereof and to vest the property in the new and continuing trustees, and the provisions of the Trustee Act, 1925, shall apply accordingly.

Resolution of committee or of general meeting, how to be evidenced.

7. WHENEVER by this Deed, or by any such rules or regulations as aforesaid, a resolution of the committee or of a general meeting of governors is required for any purpose, a copy of such resolution purporting to be signed by the chairman of the committee, or the chairman of the general meeting by which such resolution shall have been passed, shall be deemed to be sufficient evidence thereof, so far as regards the protection of any purchaser, mortgagee, lessee or other person dealing with the Trustees for money or money's worth.

IN WITNESS, &c. (*Add Schedule.*)

No. IXA.

CONVEYANCE *of* LAND *by way of* GIFT *as a* SITE *for a* COTTAGE HOSPITAL.(t) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Donor), of the one part, and the Donor and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter together called the Trustees), of the other part : WHEREAS :—

Intention to establish cottage hospital and appointment of committee.

(1) It is proposed to establish a cottage hospital for the treatment and relief in sickness of poor persons living in the parishes hereinafter mentioned, and a committee has been appointed to collect subscriptions for the building and endowment thereof, and the Trustees are members of such committee :

Agreement to give site.

(2) The Donor being seised in fee simple free from incumbrances has agreed to give the piece of land hereinafter described as a site for such hospital :

(t) See notes to Prec. IIIc, p. 901, *supra*, and to last Precedent.

NOW THIS DEED WITNESSETH as follows :—

Donor conveys site to trustees, in trust to permit land and building to be used as a cottage hospital.

1. THE Donor hereby freely and voluntarily gives and conveys unto the Trustees :

ALL THAT, &c. (*referring to Schedule*),

TO HOLD unto the Trustees in fee simple, UPON TRUST to permit the same and the buildings to be erected thereon to be used as a cottage hospital for the treatment and relief in sickness of poor persons living in the Parish of F ——, or any of the following Parishes, namely : ——, ——, subject to the provisions hereinafter contained.

Rules and regulations to be framed.

2. THE Trustees and any committee appointed or approved of by them may from time to time make rules and regulations for the management and government of the said hospital, and may modify or alter the same ; and such rules and regulations shall provide (among other things) for the appointment of a committee of management or other governing body either by the election of the subscribers or in any other manner which may be thought desirable, but so that the Trustees shall always be *ex officio* members of the said committee or governing body, and the said rules and regulations shall also prescribe the conditions of admission to the said hospital ; and it may be made one of such conditions that patients able so to do shall pay part of the expense of their maintenance and treatment in the said hospital.

Power to deal with site.

3. IN addition to the powers conferred by section twenty-nine of the Settled Land Act, 1925, and subject to any approval of the Charity Commissioners which may be required by law if at any time the committee of management or other the governing body of the said hospital shall consider that the existing building is inconveniently situated for the purposes of the hospital, and that it will be better to remove the hospital to another site, then and in such case the Trustees shall by the direction of the said committee or governing body, and with the approval of the Charity Commissioners, sell the land hereby conveyed and the buildings thereon, and out of the net proceeds of the sale purchase another site and erect a new hospital thereon.

Power to give up hospital if no longer required, and to sell land and apply proceeds for other charitable purposes.

4. IF the committee of management or other governing body of the said hospital shall at any time hereafter consider that the said hospital is no longer required, or for want of adequate support or otherwise cannot be effectually kept up, or that for any other reason it will be desirable to divert the said land and the buildings thereon or the money to arise from the sale thereof to some other charitable purpose, then and in such case

the Trustees shall, by the direction of the said committee or governing body, and with the approval of the Charity Commissioners, sell the said land and buildings, and shall hold the net money to arise from such sale, IN TRUST for all or such one or more exclusively of other or others of the charitable institutions of the Parish of F——, or for such other purposes for the benefit of the poor inhabitants of that Parish as the Trustees or the majority of them shall in their absolute and uncontrolled discretion by any deed appoint.

Statement of trustees to be sufficient evidence that sale, &c., is authorised.

5. UPON any sale or other transaction for value made by the Trustees in professed exercise of the powers hereinbefore or by statute conferred upon them, and as well before as after conveyance, the statement of the Trustees that the sale has been duly authorised by the committee or other governing body shall be conclusive evidence as regards the purchaser, mortgagee, lessee or other person dealing with the Trustees for money's worth in good faith of the fact so stated.

New trustees.

6. THE statutory power to appoint new Trustees shall apply to this Deed.

IN WITNESS, &c. (*Add Schedule.*)

NO. IXB.

INSTRUMENTS *for same purpose as last Precedent, where* LAND *is* REGISTERED.(u)

1. INSTRUMENT OF TRANSFER.

(*Heading as in Prec.* IC, *p.* 887.)

Transfer to Trustees.

(*Date.*) I, A. B., of, &c., hereby transfer to myself and C. D., of, &c., E. F., of, &c., and G. H., of, &c., the land, &c., to be used as a site for a cottage hospital for the treatment and relief in sickness of poor persons living in the parishes of —— and ——.

(*Execution and attestation.*)

2. CONTEMPORANEOUS DEED.

THIS DECLARATION OF TRUST is made this, &c. (*date*), by A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter together called the Trustees): WHEREAS:—

(u) See notes to Prec. IIIc, p. 901.

(1) It is proposed to establish a cottage hospital for the treatment and relief of poor persons living in the Parishes of ——, and the above-named persons are members of a committee appointed to collect subscriptions for the building and endowment thereof :

Intention to establish cottage hospital and appointment of committee.

(2) The said A. B. has by an instrument of transfer in the prescribed form bearing even date herewith transferred a piece of land therein described, and of which he was registered proprietor, to the Trustees as a site for such hospital :

Transfer of site by way of gift to Trustees.

NOW THIS DEED WITNESSETH and the Trustees hereby declare as follows :—

1. THE hospital to be built on the said land shall be managed and governed according and subject to such rules and regulations as shall from time to time be made or approved by the Trustees.

Rules and regulations to be framed, &c.

2. THE rules and regulations to be framed as aforesaid shall provide, &c. (*The remainder of the deed will be similar to No.* IXA, *p.* 912, *the provisions being arranged in paragraphs.*)

IN WITNESS, &c.

No. XA.

CONVEYANCE *of* LAND *by a* TENANT FOR LIFE *under* S. L. ACT, *s.* 55, *as a* SITE *for an* IRON CHURCH, *with power for the* GRANTEES *to convey it to the* ECCLESIASTICAL COMMISSIONERS *in case of its being* ENLARGED *into a* PERMANENT BUILDING.(*v*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN T. L., of, &c.

Parties.

(*v*) Under the Places of Worship Sites Acts, 1873 and 1882, where a tenant for life wished to convey land as a site for a church, chapel, meeting-house or other place of Divine Worship, or for a residence for a minister officiating in such place of worship, or for a burial place, either the person next entitled in fee simple or in tail had to join in the conveyance, but under L. P. (Amend.) Act, 1924, 9th Sched., para. 7, a separate consent in writing is sufficient. If the person next entitled was unborn or not ascertained, then the next remainderman (whether entitled for life, in fee or in tail), or if none such, then the trustees of the land during the suspension or contingency of the immediate or expectant estate in fee or in tail, had to join. When the conveyance was for valuable consideration the purchase-money had to be paid to the trustees of the settlement, or if there were none in existence, then to two trustees to be appointed in writing by the tenant for life. For a Precedent under the old law see 21st ed., Vol. II, p. 1077. Now under S. L. Act, 1925, s. 55 (1) (i), the tenant for life can, without any such consent, convey the site or an extension of a site for a place of religious worship, &c., provided that not more than one acre is conveyed for any purpose mentioned in para. (i), and that the conveyance is made for the development, improvement or general benefit of the settled land or any part thereof.

Old law.

New law.

(hereinafter called the Donor), of the first part, A. T., of, &c., and B. T., of, &c. (hereinafter called the Trustees),(*w*) of the second part, and The Rev. E. F., of, &c., the present Vicar of the said Parish of ——, and G. H., of, &c., and J. K., of, &c., churchwardens of the said Parish (hereinafter together called the Grantees), of the third part: WHEREAS:—

Vesting instrument.

(1) By a Vesting Deed [Assent] dated, &c., the piece of land hereinafter described (with other land), was declared to be vested in the Donor in fee simple on the trusts of a Will dated, &c., and proved, &c. [*or* on the trusts of a Settlement dated, &c.], and the Trustees were declared to be the trustees of the Settlement [created by the said Will] for the purposes of the Settled Land Act, 1925:

Desire to grant site for temporary church.

(2) For the development, improvement or general benefit of the settled land the Donor is desirous of making a grant in fee simple gratuitously of the land hereinafter described as a site for a place of religious worship to the Grantees in manner, and on the trusts hereinafter appearing:

Iron church to be licensed.

(3) It is contemplated that at present only an iron temporary church can be erected on the said site (to be licensed by the Archbishop of Canterbury), the said site not being large enough for a permanent building, but it is hoped that the site may be hereafter enlarged by the acquisition of other land, and that a permanent church may then be built in which case it may be desirable that the church and site should be vested in the Ecclesiastical Commissioners under the Church Building Acts: NOW THIS DEED WITNESSETH, and it is hereby declared as follows:—

Grant of site.

1. THE Donor, in exercise of the powers conferred on him by section fifty-five of the Settled Land Act, 1925, and of all other powers hereby, As Settlor, conveys unto the Grantees:

ALL, &c. (*parcels*),

TO HOLD unto the Grantees in fee simple discharged as mentioned in section seventy-two of the said Act, UPON TRUST to use the said land (either alone or in conjunction with any adjoining land which may be obtained for the purpose) as a site for a church or chapel of ease for the celebration of divine service

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(*w*) The S. L. Act trustees are not necessary parties, as no capital money arises on the transaction, but it is more convenient to express them to be parties to show that there are trustees, for the grantees are not purchasers within S. L. Act, 1925, s. 110 (4). If the remainderman is of age it may be expedient to obtain his separate consent in writing to comply with the Places of Worship Sites Acts as amended.

according to the doctrine and rites of the Church of England as by law established, or for any other kindred purposes mentioned in paragraph (i) of sub-section (1) of section fifty-five aforesaid, and for no other purpose whatever.

Vicar and churchwardens to have sole control.

2. (1) UNLESS and until the said land shall become vested in the Ecclesiastical Commissioners as hereinafter provided the erection of the church or chapel thereon, and the arrangements for the conduct of divine service therein, and the management of the same generally, shall be under the sole control of the persons who shall, for the time being, be the vicar and churchwardens of the said Parish of —— :

(2) If and whenever the legal estate in the said land shall, under this Deed, be vested in any persons other than the vicar or churchwardens for the time being, such persons shall convey and deal with the same from time to time as the said vicar and churchwardens shall direct.

Declaration that if permanent church built, site may be conveyed to Ecclesiastical Commissioners.

3. IF the said vicar and churchwardens, for the time being, shall at any time hereafter determine to have a permanent church erected, either wholly on the land hereby conveyed, or partly on that land and partly on other land to be hereafter acquired for the purpose, then and in such case the said vicar and churchwardens may convey the said land, or cause the same to be conveyed by the estate owners for the time being, to the Ecclesiastical Commissioners, or as the said Commissioners shall direct, to be devoted, when consecrated, to ecclesiastical purposes for ever,(*x*) by virtue and according to the true intent and meaning of the Church Building Acts, 1818 to 1884.

Limit of land granted.

4. THE Donor hereby declares that as respects the land comprised in the recited vesting instrument not more than one acre has in any particular case been conveyed for any purpose mentioned in paragraph (i) of sub-section (1) of section fifty-five of the Settled Land Act, 1925.

Acknowledgment.

5. THE Donor hereby acknowledges the right of the Grantees to production of the recited vesting instrument and to delivery of copies thereof.

IN WITNESS, &c.

Consecrated land. Faculties.

(*x*) Land once consecrated is consecrated for ever or at any rate till an Act of Parliament divests it of its sacred character. Secular Courts have no jurisdiction to grant a faculty for its use for secular purposes, but Ecclesiastical Courts may in certain cases grant such a faculty: *Sutton* v. *Bowden* [1913], 1 Ch. 518; 82 L. J. Ch. 322. As under the trusts the site may be used for purposes outside the Places of Worship Sites Acts it may be expedient to record the deed with the Charity Commissioners within six months.

No. Xb.

INSTRUMENTS *for same purposes as last Precedent where* LAND *is* REGISTERED.

(*Heading as in Prec.* Ic, *p.* 887.)

Transfer by tenant for life as site for church.

(*Date.*) PURSUANT to section fifty-five of the Settled Land Act, 1925, I, A. B., of, &c. (*tenant for life*), hereby transfer to The Reverend E. F., of, &c., G. H., of, &c., and J. K., of, &c., the land, &c., UPON TRUST to apply the said land as a site for a church or chapel of ease for the celebration of divine service according to the doctrine and rites of the Church of England as by law established or for any kindred purpose mentioned in paragraph (i) of sub-section (1) of the said section and for no other purpose whatsoever: AND IT IS HEREBY DECLARED that no land other than that hereby transferred is now held by the transferees for the same purpose; And that not more than one acre has in any particular case been conveyed by the said A. B. or his predecessors for any purpose mentioned in the said paragraph.

(*The transfer must be executed by the Donor and the Grantees and attested.*)

CONTEMPORANEOUS DEED.

THIS DECLARATION OF TRUST, &c. (*parties* (1) *Donor;* (2) *the Grantees—this deed will recite the transfer and contain the special provisions contained in Prec.* Xa, *supra*).

No. XI.

DEMISE *of* LAND *for a* LONG TERM *at a* NOMINAL RENT *to an* URBAN SANITARY AUTHORITY (*y*) *for a* PUBLIC PARK *or* RECREATION GROUND.(*z*) (*Legal Estate.*)

Parties.

THIS LEASE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression where the context admits includes the persons from time to time entitled in reversion

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(*y*) The Local Government Act, 1894, s. 8, enables a Parish Council to acquire land for these purposes.

(*z*) See the Public Health Act, 1875, s. 164, as amended by the P. H. Act, 1890 (if adopted): P. H. Act, 1907, and the P. H. Act, 1925, s. 56 (if adopted). An assurance for the above purposes is exempted from the provisions of expectant on the term hereby granted), of the one part, and the Mayor, Aldermen, and Burgesses of the Borough of ——, in the county of ——, being the urban sanitary authority for the said Borough (hereinafter called the Corporation, which expression, where the context admits, includes their assigns), of the other part: WITNESSETH as follows:—

Demise to urban authority.

1. The Lessor hereby demises unto the Corporation:

All that piece of land, &c.,

Reservation of mines, &c.

Except and reserving unto the Lessor all mines of coal, ironstone, fireclay, water and other substances in and under the premises, with all necessary powers for getting the same, so that no entry be made upon the surface of the said land for that purpose, but so also that the present or future owners or lessees of the minerals shall not be liable for any damage that may have arisen or have been occasioned, or may hereafter arise or be occasioned, to the surface or to any present or future buildings or erections thereon, by subsidence or otherwise, by reason of working the minerals or any adjacent minerals, and whether the minerals or any of them have been already worked or got or shall hereafter be worked or got, to the intent that no right to the support of the surface by any subjacent or adjacent minerals shall be conferred on the Corporation or implied from this lease,

But with power for the Corporation to dig for and use any common clay, marl, and sand in the said land for the purposes of the Park hereinafter mentioned, but so that such clay, marl, and sand shall not be manufactured into bricks or other articles, or be sold or removed from the said land,

Term of 999 years, at nominal rent.

To hold (subject to the rights of any yearly tenants) unto the Corporation for the term of 999 years from the —— day of ——, 19—, Yielding and Paying therefor the yearly rent of ten shillings, to be paid on the —— day of —— in every year.

Covenants by Corporation.

2. The Corporation (*a*) hereby covenant with the Lessor in manner following (that is to say)—

Pts. I and II of the Mortmain, &c., Act, 1888, hence never did require enrolment at the Central Office; see s. 6 (1) of that Act. The deed should, however, be recorded with the Charity Commissioners, see the Act of 1888, s. 6 (2); *cf.* S. L. Act, 1925, s. 29 (4) (amending s. 4 of the Act of 1888), but is not void if the lessor dies within twelve months: Mortmain, &c., Act, 1892, s. 1.

Presumed dedication.

Where part of a park is purchased the court will not assume that the remainder has been dedicated to the public merely because it is left unfenced: *A.-G.* v. *Bradford Corp.* (1911), 55 Sol. J. 715.

(*a*) This operates as a covenant by the corporation for themselves and their assigns: L. P. Act, 1925, s. 79.

(1) During the said term to pay all existing and future rates, taxes, assessments and outgoings of every description for the time being payable either by landlord or tenant in respect of the land hereby demised:

To lay out land as a park.

(2) Forthwith at the expense of the Corporation to proceed to lay out the land hereby demised as and for a public park or recreation ground, and for that purpose to plant the same with ornamental trees and shrubs, and make and construct such roads and footpaths through the same as may be necessary or convenient:

To fence.

(3) At the said expense to fence the said land from the adjoining property with a dwarf stone wall and iron palisading, the said fence to be completed within —— months from the date hereof:

To permit public to have use as a park.

(4) To permit the inhabitants of —— and the neighbourhood thereof and the public generally to have the use and enjoyment of the said land as a public park for the purposes of recreation at all reasonable times during the said term:

Not to permit political or religious meetings.

(5) Not at any time during the said term to permit public meetings for the discussion of political, religious, trade or social questions, or other matters of controversy, to be held, or religious services to be conducted, or lectures or addresses delivered on any part of the said land, nor during such term to permit the said land or any part thereof to be used except as a public park or for any other purposes than those of recreation and enjoyment:

To do nothing which may be an annoyance to neighbouring property.

(6) Not to do or suffer any act or thing which may be or grow to the annoyance, damage, or disturbance of the Lessor or his tenants or lessees or the owners or occupiers of any adjoining or neighbouring property:

Not to assign, &c., without consent.

(7) Not to assign, underlet or part with the possession of the premises or any part thereof during the said term without the previous licence in writing of the Lessor:

Not to erect any building without consent.

(8) Not during the said term to erect, or suffer to be erected, on any part of the premises any building or erection, either permanent or temporary, without the previous licence in writing of the Lessor.

Corporation may make bye-laws.

3. Provided that the Corporation may from time to time make such bye-laws and regulations as they shall deem necessary or convenient for securing to the public the reasonable use and enjoyment of the said park, and for the maintenance of order

and decency therein, and for any other purposes for which bye-laws and regulations are usually made in like cases.(*b*)

IN WITNESS, &c.

No. XII.

CONVEYANCE *on a sale of a* BUILDING *and* LAND *for a* NONCONFORMIST CHAPEL *and a* MINISTER'S HOUSE.(*c*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE, made, &c. (*date*), BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and [*insert names and addresses of trustees*] (hereinafter called the Trustees), of the other part: WITNESSETH, and it is hereby declared as follows:—

Conveyance to Trustees.

1. IN consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Trustees:

ALL, &c. (*parcels*),

TO HOLD unto the Trustees in fee simple upon the trusts hereinafter declared.

Power to re-enter.

(*b*) In a lease of this nature it is not usual to insert any condition for re-entry on breach of covenant. But where the demise is made by a tenant for life, it will be essential to insert a covenant to pay the rent (if any) and a condition of re-entry: S. L. Act, 1925, s. 42, unless this requirement is negatived by the settlement, and see *ib.*, s. 55. Model bye-laws for the regulation of pleasure grounds are issued by the Ministry of Health; see also the Public Health Acts Amendment Act, 1907, s. 76. As to the rights of the public over commons and waste lands and the regulation thereof: L. P. Act, 1925, s. 193; as to restrictions against fencing in commons: *ib.*, s. 194.

Commons.

Number of trustees.

(*c*) Most dissenting denominations have model trust deeds, as to which inquiries should be made. There is no restriction on the number of trustees: T. Act, 1925, s. 34 (3).

Semble, the deed comes within the Mortmain, &c., Act, 1888, s. 7 (2), if the land does not exceed two acres and so far as it is to be used for the erection of a chapel, &c.; but as the trustees have power to apply the proceeds of a sale for promoting the objects of the society generally, it may be open to question whether this is covered by the exemption. On the whole, it will be prudent to record the deed with the Charity Commissioners: S. L. Act, 1925, s. 29 (4).

Registered places of worship.

Under the Places of Religious Worship Registration Act, 1855, s. 9, the building will be exempt from the provisions of the Charitable Trusts Acts if it is registered as a place of religious worship and so long as it is used in good faith as such, except so far as relates to the appointment and removal of trustees, the vesting of real or personal estate, and the establishment of schemes, as to which see C. T. Act, 1869, s. 15. By the C. T. (Places of Religious Worship) Act, 1894, the exemption contained in the Act of 1855 is extended to certain other lands and buildings.

Trust to permit same to be used as a place of worship by dissenting society.

2. The Trustees shall permit the premises to be used as a place of public worship by the Society of Protestant Dissenters called ——, and shall permit to officiate in the said building and to reside in any house which may hereafter be erected upon the premises such persons of the denomination of Protestant Dissenters called —— as the members of the said Society present at any chapel meeting duly assembled for that purpose, by public notice to be given in the said building during public worship on the two Sundays immediately preceding such chapel meeting, or two-thirds of them in number (hereinafter called the prescribed majority), shall from time to time elect as their minister or pastor during their will and pleasure.

To allow Sunday school and other schools to be held in building.

3. The Trustees shall, if a schoolroom shall be erected or provided upon the premises or any part thereof, or if there shall be no separate schoolrooms, and the prescribed majority shall consider it necessary or expedient to hold Sunday or other schools in any proper part of the said building, permit a Sunday or other school to be held, conducted, and carried on from time to time in the said building, but only at such hours and times as shall not interfere with divine worship, and in all cases subject to such regulations as shall be agreed upon by the prescribed majority.

Power to mortgage and dispose of the property.

4. The Trustees shall from time to time raise such sums as the prescribed majority shall direct by mortgages of all or any part of the premises, and also, when so required by the prescribed majority, exercise all or any of the powers conferred by section twenty-nine of the Settled Land Act, 1925,(*d*) but so that the Trustees shall stand possessed of the lands which shall be taken in exchange upon the same trusts as are hereinbefore declared concerning the property hereby conveyed, and shall stand possessed of the capital money which from time to time shall be received on any mortgage, sale, or exchange, or in respect of the rents and profits of the premises, Upon trust to lay out and apply the same, either in the purchase of other land, to be held upon the same trusts as are hereinbefore declared concerning the premises hereby conveyed, or in the repair or improvement of the trust property, or for promoting the objects of the said

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Repayable by instalments.

(*d*) The above powers cannot generally be exercised after the building has ceased to be used as a place of religious worship without the approval of the Charity Commissioners. In a mortgage made by order of the Commissioners provisions will be inserted for paying off the principal money by instalments: C. T. Act, 1855, ss. 29, 30.

Society, in such manner as the prescribed majority shall from time to time direct.

If Society is dissolved, premises to be held on other trusts.

5. THE Trustees shall, if the said Society shall be totally dissolved or dispersed, or the regular public worship at the said building be discontinued for at least twelve consecutive months, stand possessed of the premises, UPON TRUST, &c. (*here specify the trust or object for which the building may be used in the event referred to*).

New Trustees.

6. PROVIDED that if and when the number of the Trustees for the time being hereof shall by death or otherwise be reduced to four or less (or oftener if the prescribed majority shall think it expedient) so many other persons shall be appointed to be Trustees hereof as shall make up the whole number of Trustees to nine or less, such new Trustees to be from time to time appointed by the prescribed majority.

IN WITNESS, &c.

No. XIII.

APPOINTMENT *of* NEW TRUSTEES *of the* CHAPEL, *&c., erected pursuant to the last Precedent under the Trustee Appointment Acts.*(*e*) (*Legal Estate.*)

MEMORANDUM of the choice and appointment of new Trustees of the chapel at ——, in the County of ——, known as The —— Independent Chapel, and the minister's house

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Statutory provisions for facilitating the appointment of new trustees of land held in trust for religious or educational purposes.

(*e*) Provision is made to facilitate the appointment of new trustees holding property in trust for religious or educational purposes, by the Trustee Appointment Acts, 1850, 1869 and 1890 (13 & 14 Vict. c. 28; 32 & 33 Vict. c. 26; 53 & 54 Vict. c. 19). The operation of these Acts is preserved by L. P. Act, 1925, s. 7 (3) (c). The Act of 1850 provides that whenever freehold or leasehold property in England or Wales has been or shall be acquired by any congregation, society, or body of persons associated for religious purposes, or for the promotion of education, as a chapel, meeting-house, or other place of religious worship, or as a dwelling-house for the minister, with offices, gardens, and glebe, or land in the nature of glebe, for his use, or as a school-house, with the schoolmaster's house, garden, and playground, or as a college, academy, or seminary, with or without grounds, for air, exercise, or recreation, or as a hall or rooms for the meeting or transaction of the business of such congregation, or society, or body of persons; and whenever the conveyance, &c., of such property has been or may be taken to or in favour of a trustee or trustees to be from time to time appointed, or of any party named in such conveyance, &c., or subject to any trust for the congregation, or society, or body of persons, or of the individuals composing the same, such conveyance, &c., shall not only vest the property in the parties named therein, but also in their successors in office for the time being, chosen and appointed in the manner provided or referred to in the conveyance, &c., or in any separate

Conveyance of land acquired by trustees to vest in their successors in office without any assurance.

adjoining thereto, at a meeting duly convened, constituted, and held for that purpose in the vestry-room of the said chapel on the —— day of ——, 19—.

X. Y., of, &c., Chairman.

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deed or instrument declaring the trust, without any transfer or other assurance. And the Act also provides that every choice and appointment of a new trustee shall be made to appear by some deed under the hand and seal of the chairman for the time being of the meeting at which the appointment shall be made, and shall be executed in the presence of such meeting and attested by two or more credible witnesses, and the deed may be in the form contained in the schedule to the Act.

Appointment of new trustees, how to be evidenced.

Burial.

The Act of 1850 is extended by the Act of 1869 to burial grounds.

Extension of Act of 1850 by Act of 1890.

By the Act of 1890 the Act of 1850 is declared to apply to and include any land acquired by trustees in connexion with any society or body of persons comprising several congregations or other sections or divisions, or component parts associated together for any religious purpose, when such land is held in trust for any of the following purposes, namely :—(1) A place for religious worship; (2) An endowment or provision for the maintenance of any place of religious worship or the minister thereof, or provision for expenses connected therewith; (3) A burial ground; (4) A place for education and training of students, whether for the ministry or for any other purpose; (5) A schoolhouse for a Sunday school, day school, or other school; (6) A residence for a minister or schoolmaster, or for the caretaker of a place of religious worship, or of a schoolhouse or meeting-house or offices or other buildings for or in connexion with religious or educational purposes.

Statutory power to appoint new trustees made applicable to cases under these Acts.

The power to appoint new trustees, conferred by T. Act, 1925, s. 36, or any other statutory power for the same purpose for the time being in force, applies to all land acquired and held on trust for any of the purposes to which the above Acts apply. And any such statutory power may be exercised either by the persons and in the manner provided by that power or by the persons and by resolution at a meeting, or in any other mode in which, under the instrument creating the trust, the appointment of a new trustee in the place of a deceased trustee can be effected; but where a special qualification is required, persons so qualified shall alone be appointed: Act of 1890, s. 3.

Provision against concurrent exercise of powers.

Where, by force of the Act of 1890, an appointment of a new trustee is capable of being made under a power in any instrument, as well as under a statutory power, no appointment is to be made under the statutory power until twelve months after the happening of the vacancy: s. 5.

After six months, appointment to be valid in favour of purchaser.

After the expiration of six months from the date of an appointment of new trustees, the persons appointed shall be deemed duly appointed and can make a valid and effectual conveyance to any purchaser or mortgagee, if no proceedings are taken in the meantime to impeach the appointment: s. 6.

Memorandum in statutory form to be conclusive evidence of certain matters.

Whenever the trustees, or a major part of the trustees, or any other persons present at a meeting duly constituted, are empowered to appoint trustees by resolution, then a memorandum of the appointment, which states that the meeting was duly constituted, and which is otherwise made in the form or to the effect and also subscribed in the manner directed or provided in the Act of 1850 and the schedule thereto is sufficient and conclusive evidence that the appointment was duly made, without any evidence of the due constitution of the meeting or of the proceedings thereat: s. 7.

The above Precedent is in accordance with the form in the schedule to the Act of 1850.

Names and descriptions of all the Trustees named in the conveyance of the site of the said chapel and premises, dated the —— day of ——, 19— [*or* on the last appointment of Trustees made the —— day of ——, 19—].

A. B., of, &c.
C. D., of, &c.
E. F., of, &c.
G. H., of, &c.
J. K., of, &c.
L. M., of, &c.
N. O., of, &c.

Names and descriptions of all the Trustees in whom the said chapel and premises now become legally vested.

First—Old continuing Trustees :

E. F., of, &c.
G. H., of, &c.
J. K., of, &c.
L. M., of, &c.
N. O., of, &c.

Second—New Trustees now chosen and appointed :

P. Q., of, &c.
R. S., of, &c.

Dated this —— day of ——, 19—.

X. Y. (L.S.)

Chairman of the said meeting.(*f*)

Signed, sealed, and delivered by the said X. Y., as chairman of the said meeting, at and in the presence of the said meeting, on the day and year aforesaid, in the presence of

T. U.
W. Z.

(*f*) This memorandum must be executed by the chairman of the meeting at which the appointment of trustees is made in the presence of the meeting, and such execution must be attested by two witnesses : Trustee Appointment Act, 1850, s. 3.

No. XIV.

CONVEYANCE *of a* SCHOOLHOUSE *by the* MANAGERS *of a* PUBLIC ELEMENTARY SCHOOL *to the* LOCAL EDUCATION AUTHORITY *under section* 38 *of the* EDUCATION ACT, 1921. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c. (*date*), BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., G. H., of, &c., J. K., of, &c., and L. M., of, &c. (hereinafter called the Managers), of the first part, The Rector and Churchwardens of the Parish of —— (hereinafter called the Estate Owners), of the second part, and The —— County Council,(*g*) being the local education authority for the said County (hereinafter called the Council), of the third part: WHEREAS:—

Foundation deed.

(1) By a Deed (hereinafter called the Trust Deed) dated, &c., under the hand and seal of X. Y., the said X. Y., under the authority of the School Sites Act, 1841, conveyed a piece of land situated at ——, and containing, &c. To the Rector and churchwardens of the said Parish of —— for the purposes of the said Act, and to be used as a site for a school for poor persons and for the residence of a master, and for no other purpose; And it was thereby declared that such school should be at all times in union with and conducted according to the principles of the National Society for Promoting the Education of the Poor in the principles of the Established Church throughout England; (*h*) And it was also declared that the management of the said school should be vested in and exercised by a committee consisting of the Rector of the Parish, his licensed curate or curates, if appointed by him, and —— other persons therein named, so long as they continued to be subscribers of at least 20*s*. a year, and to be members of the Church of England; and in case of a vacancy the successors of the —— last-named persons were to be selected by the subscribers in the manner therein mentioned, and every member so appointed was to sign a declaration that he was a member of the

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(*g*) Where a county, borough, or urban district council are the local education authority they can, with the consent of the Board of Education, appropriate land vested in them in that capacity for other purposes approved by the Ministry of Health: Ed. Act, 1921, ss. 113 and 114.

Estate owners.

(*h*) This provision does not prevent the managers from transferring the school under the Act, but notice of the intended transfer should be given to the National Society: *National Society* v. *London School Board* (1874), 18 Eq. 608. As to exercising the statutory power to convey in the names of the estate owners: L. P. Act, 1925, s. 7 (4).

Church of England ; And the Trust Deed contained no provision for the alienation of the school by any person or in any manner or subject to any consent : (*i*)

Erection of school buildings.

(2) A school was established according to the Trust Deed, and a schoolhouse and master's residence erected on the said piece of land, the costs of such erection being defrayed partly by subscriptions and partly by means of a grant from the National Society :

Date of coming into operation of Act of 1902.

(3) The Education Act, 1902, came into operation in the County of —— on the —— day of ——, 1903 :

Appointment of foundation managers.

(4) Pursuant to an order of the Board of Education, dated the —— day of ——, 19—, and made on the application of the committee of management of the said school, the Managers (other than the said E. F. and G. H.) were appointed to be the foundation managers of the said school : (*j*)

Other managers.

(5) The said E. F. and G. H. are also the managers of the said school, appointed by the Council and by the —— parish council [*or* —— district council] respectively :

Requisition by authority as to repairs and alterations.

(6) The Council have required the Managers to execute certain repairs and make certain alterations and improvements in the school buildings :

Meeting of managers and resolution for transfer.

(7) At a meeting of the Managers of the said school duly convened and held at the schoolhouse on the —— day of ——, 19—, it was resolved that by reason of the falling off of the subscriptions to the said school and of the inadequacy of the funds within the control of the Managers it had become impracticable to comply with the aforesaid requisition of the Council, and that it was desirable to make an arrangement for the transfer of the school buildings to the Council, reserving to a committee of management constituted under the provisions of the Trust Deed the exclusive use of the school premises (except the master's residence) for the purposes of the said trust on every Sunday, and also between the hours of —— and —— in the morning on every Friday in each year, the Council undertaking the repairs and insurance against fire of the school premises :

Consent of trustee.

(8) Notice of the proposed arrangement has been given to

(*i*) If the deed contained any such provision, it must be complied with ; see Act of 1921, 4th Sch., Pt. I ; also S. L. Act, 1925, s. 29.

(*j*) See Ed. Act, 1921, s. 31.

——, being the only trustee of the said school who is not a manager, and he has assented to the same in writing:(*k*)

Consent of the subscribers and Board of Education.

(9) On the —— day of —— the proposed arrangement received the consent of —— (not being less than two-thirds of the annual subscribers to the said school, who were present at a meeting duly summoned and voted on the question) and also received the consent of the Board of Education on the —— day of ——, and the same arrangement was afterwards, in the terms of the said resolution, embodied in an Agreement dated the —— day of ——, and made between, &c. (*parties*):

Conveyance by managers.

NOW, for effectuating the said arrangement, and in exercise of the powers for this purpose conferred by section thirty-eight of the Education Act, 1921, and of all other powers, THIS DEED WITNESSETH that the Managers, as the managers of the said school, hereby convey, and the estate owners hereby convey and confirm, unto the Council:

Parcels.

ALL THOSE the school buildings and premises situated at —— aforesaid, now or lately used for the purposes of the said Charity, including the master's residence and the yard, playgrounds, and outbuildings and appurtenances belonging to the same, which school buildings and premises are delineated on the plan hereto and are thereon coloured pink,

Habendum.

TO HOLD unto the Council and their assigns in fee simple, To and for the intents and purposes following (namely):—

Council to keep the premises in repair and insured, and permit same to be used by committee under trust deed and during certain hours on Fridays.

(1) That the Council shall at all times hereafter keep the said schoolhouse and premises, and the fences separating the same from the adjoining properties, in good repair, and all buildings upon the premises hereby conveyed insured against loss or damage by fire in a sum equal to the value thereof, with underwriters or in some office of insurance, to be selected in either case by the Council:

(2) That the Council shall permit a committee of management, constituted from time to time according to the provisions of the Trust Deed, to have the exclusive use of the premises hereby conveyed (except the master's residence), for the purposes of their trust, on every Sunday in each year, and also between the hours of — and — in the morning of every Friday in every year:

And subject thereto, that same may be a school provided by Education Authority.

(3) That (subject as aforesaid) the premises shall be deemed to be a school provided by the Education Authority within the meaning of the Education Act, 1921.

IN WITNESS, &c.

(*k*) See Act of 1921, 4th Sch., Pt. I (8).

No. XV.

PETITION *for a* LICENCE *in* MORTMAIN.(*l*)

To the King's Most Excellent Majesty.

THE HUMBLE PETITION of, &c.

SHOWETH as follows :—

YOUR Petitioners were incorporated by Royal Charter, &c. (*Recite charter, shortly stating amount of land authorised to be held, and that the amount has been exceeded by the acquisition of —— acres in the Parish of ——, in the County of——.*)

UNDER the circumstances hereinbefore stated your Petitioners are desirous of obtaining a confirmation of their title to the properties in the Parish of ——, the rents and profits whereof are now received by them, and also to acquire and hold in Mortmain other lands and rights or interests in land.

YOUR PETITIONERS THEREFORE HUMBLY PRAY as follows :—

1. THAT your Majesty will be graciously pleased, in case any forfeiture or forfeitures may have occurred to your Majesty or to your Majesty's predecessors in respect of any lands, tenements, or rights or interests in land in the Parish of ——, the rents and profits whereof are now received by your Petitioners by reason of the quantity of land limited as aforesaid by the said Charter of His late Majesty King —— having been exceeded :

(1) To remit such forfeiture or forfeitures :

(2) To grant to your Petitioners licence in Mortmain to hold to them and their successors all or any of the premises so forfeited.

2. THAT your Majesty will also be graciously pleased to grant to your Petitioners a licence in Mortmain to take, purchase, and hold to them and their successors any other lands, tenements, or rights or interests in land in the Parish of ——, not exceeding in the whole with those already held by your Petitioners —— acres.

AND your Petitioners will ever pray, &c.

(*l*) No stamp is required. The Petition must be sealed by the Corporation and witnessed, and the allegations in it should be verified by a Statutory Declaration. The petition should be in duplicate and must be presented through the Home Office.

CHAPTER VI.

THE NEW LAW AS TO LEASES.

SECT. I.—*The nature and operation of leases and tenancies.*

Definition of a lease.

A LEASE is an assurance or contract whereby land, or any other thing capable of being demised, is let by one person to another for an interest less in duration than the lessor has therein; an assurance for the whole duration of the estate or interest of the grantor, even though in the form of a demise, operates generally as an assignment: *Beardman* v. *Wilson* (1868), L. R. 4 C. P. 57; but a mortgage by sub-demise for a term commensurate with the term granted by a previous mortgage creates a concurrent legal term;(*a*) for this purpose it is only necessary that each mortgage term should be less than that granted by the lease.

Demise operating as assignment.

Leases for more than three years to be created by deed.

Under the L. P. Act, 1925, ss. 52, 53 and 54, all leases are required to be created by deed except leases taking effect in possession for a term not exceeding three years at the best rent obtainable without a fine.

An agreement for a lease must be in writing.

An agreement for a lease not operating as an actual demise must be in writing: L. P. Act, 1925, s. 40 ("disposition" includes a lease: *ib.*, s. 205 (1) (ii)); or it will not be enforceable by action.

Time of commencement.

In an agreement for a lease it is necessary that the time for its commencement should be stated or be capable of being implied from the terms of the agreement, taken as a whole: *Marshall* v. *Berridge* (1881), 19 Ch. D. 233; 51 L. J. Ch. 329; *Humphery* v. *Conybeare* (1899), 80 L. T. 40.

Operation of leases to confer exclusive rights.

A lease operates as a contract that the lessee shall have exclusive use of the thing demised for the term granted, but easements may be demised in common; this term may be one or more years or for less than a year, or at the will of either the lessor or the lessee.

Assignment operating as demise.

(*a*) As to mortgages of leaseholds: L. P. Act, 1925, ss. 86, 149 (5); 1st Sch., Pt. VIII; 1 Wolst. & Cherry, 11th ed., 273–76, 394, 516–19. A mortgage of a term expressed to be by assignment will operate as a sub-demise: *ib.*, s. 86 (2).

An instrument purporting to be a lease and containing the usual words of demise will not operate as such if the contents show that it was intended by the parties to operate only as a licence: *Taylor* v. *Caldwell* (1863), 3 B. & S. 826; 32 L. J. Q. B. 164; similarly an instrument purporting to be a licence may operate as a lease: *Glenwood Lumber Co.* v. *Phillips* [1904], A. C. 405; 73 L. J. P. C. 62.

Implied licence.

Licence construed as a lease.

A tenancy is the relationship existing between landlord and tenant. It may be created by a lease, or by an agreement for a lease: *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9; 52 L. J. Ch. 2; or it may be implied by law.

Definition of "tenancy"; how created.

Legal terms of years.

The only term of years which may be granted for a legal estate is a term of years absolute: L. P. Act, 1925, s. 1.

Legal terms of years.

A term of years absolute is defined in: *ib.*, s. 205 (1) (xxvii), and includes terms from year to year and for less than a year, terminable or not by notice, but not terms determinable by reason of a death or the cesser of a determinable life interest.

Definition of "term of years absolute."

A term of years absolute may take effect in possession or in reversion expectant on another interest, and may be made to run concurrently with any other legal estates including other legal terms: *ib.*, ss. 1 (5) and 205 (1) (xxvii).

Before 1926 a tenancy could not, save when created under the Statute of Uses or by Will, take effect until the tenant entered; before entry the tenant had only an *interesse termini* which, though an assignable interest, was not an estate in the land.

Abolition of "*interesse termini*" and commencement of terms of years absolute.

After 1925 a term commences, without entry, upon the date fixed for its commencement by the lease or tenancy agreement: *ib.*, s. 149 (2); hence, it has become impossible for an *interesse termini* to arise, though *abundanti cautelâ* this interest has been expressly abolished by *ib.*, s. 149 (1).

Entry not essential.

A term expressed to commence from a specified day begins on the day after that specified: *Meggeson* v. *Groves* [1917], 1 Ch. 158; 86 L. J. Ch. 145; *Raikes* v. *Ogle* [1921], 1 K. B. 576; 90 L. J. K. B. 588.

Date from which a term expressed to commence takes effect.

Where no date is given for the commencement of a term the term will commence on the date of delivery of the lease: Norton on Deeds, 173.

Where no date is given.

As a result of the abolition of *interesse termini*, reversionary leases, created after 1925, take effect as legal terms. Moreover the rule against perpetuities does not apply to the grant of a

Limit of time in which terms of years must take effect.

term: *Mann, Crossman, &c.* v. *Land Registrar* [1918], 1 Ch. 202. Accordingly it became necessary, to prevent complication of titles, to impose expressly a limit within which a term to take effect *in futuro* could be validly created.

This limit is twenty-one years from the date of the lease as respects any term granted after 1925 at a rent or in consideration of a fine. Such a term limited to commence at a more remote date is void: L. P. Act, 1925, s. 149 (3).

Limit does not apply to certain equitable terms.

No harm can be done by the creation of equitable terms in a will or settlement, however remote the date may be at which they may take effect, for such terms can be over-reached when the legal estate is dealt with, hence s. 149 (3) does not apply to such terms.

Application of the same rule to contracts for leases.

A contract, made after 1925, for a lease to take effect at a date more than twenty-one years from the date of the contract is void; such an "estate contract," if valid, could have been protected under L. C. Act, 1925, s. 10, Class C (iv).

Leases for Lives.

Prohibition of leases for lives at a rent or in consideration of a fine and conversion into terms.

Leases, at a rent or for a fine, for lives, or terminable by reason of the death or marriage of any person, or by reason of the termination of a terminable life interest, may no longer be granted. Whenever granted, they take effect as terms for ninety years terminable by one month's notice given by either party after the event upon which they were expressed to have been made determinable; accordingly they become legal estates: *ib.*, s. 149 (6). A contract to grant such a lease is satisfied by the grant of a term for ninety years terminable by notice as above: *ib.*, s. 149 (6). This sub-section does not apply to equitable interests created by settlements or Wills.

Perpetually Renewable Leases.

Effect of covenant for perpetual renewal after 1925.

After 1925 leases will not contain covenants for perpetual renewal. If such a covenant is inserted in a lease it will operate to create a term of two thousand years; such a covenant contained in a sub-lease will operate to create a term less by one day than the head term, but in no case will there be any liability for renewal or for the payment of any fines, fees, costs, or other money in respect of renewal: L. P. Act, 1922, 15th Sch., para. 5.

Effect of contracts for perpetual

A contract (not completed) for perpetual renewal entered into before 1926 will be satisfied by the creation of a term of 2,000 years as above : *ib.*, para. 6 (1). In such a case the loss of fines and other money which would have been payable on renewal will be taken into account when the rent is fixed, and any dispute concerning the rent to be paid may be submitted to the Minister of Agriculture and Fisheries : *ib.*, para. 6 (2).

renewal entered into before 1926.

Effect of similar contract entered into after 1925.(*b*)

A contract for perpetual renewal entered into after 1925 will have effect as an agreement to grant a long term as above, save that the amount of the fines, &c., which would have been payable on renewal will not be taken into account in fixing the rent : *ib.*, para. 7 (1).

Contracts to renew a lease for more than sixty years.

A contract entered into after 1925 to renew a lease for more than sixty years is void : L. P. Act, 1922, 15th Sch., para. 7 (2).

Tenancies at Will and on Sufferance.

Tenancy at will.

A tenancy at will is where a tenant holds at the will of his landlord ; such a tenancy is deemed by law to be at the will of the tenant also, hence it can be determined by either party at pleasure.(*c*)

Tenancy on sufferance.

A tenancy on sufferance is created by a tenant wrongfully holding over after the termination of his tenancy without either the assent or dissent of his landlord. Such a tenant has no estate or interest in the land, though, in right of being in possession, may sue for trespass, but cannot maintain an action for ejectment ; he may, however, obtain a title against his landlord under the Limitation Acts.(*d*)

Distinction between tenancies at will and on sufferance.

The distinction in principle between a tenancy at will and on sufferance is that in the former case the tenant holds by right, in the latter the tenant holds by wrong.

Tenancy of a mortgagor in possession.

A mortgagor in possession is sometimes said to hold as tenant at will to the mortgagee, but in reality the relationship more closely resembles a tenancy on sufferance ; for any person who, after the date of the mortgage, is let into possession of the property by a mortgagor, except under his express or statutory powers, is, as regards the mortgagee, in the same position as the mortgagor. After 1925 the mortgagor will either have the fee simple or the head term, but this does not alter the situation.

Effect of a lease of an agricultural

Where, however, a person occupies an agricultural holding under a contract of tenancy with a mortgagor which is not

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(*b*) As to perpetually renewable leases created before 1926, see L. P. Act, 1922, 15th Sch., and 1 Wolst. & Cherry, 11th ed., 89, *et seq.*

(*c*) Co. Inst., 1794, 68 ; Co. Litt., 1832, 55A, as to tenancies at will generally : Woodfall, 21st ed., 280, *et seq.*

(*d*) Co. Litt., 1832, 57B ; Cole, Ejec. (1857), 456.

Conversion of perpetually renewable leases into long terms.

holding which is not binding on a mortgagee.

binding on the mortgagee, the mortgagee must comply with the provisions of the Agr. Hold. Act, 1923, s. 15, before he can obtain possession of the property.

Mortgages are subject to existing leases.

A mortgage takes effect subject to all leases and tenancies existing at the date of the mortgage, but a mortgagee may at any time order the tenant to pay the rent to him or to his receiver; when the mortgagor collects the rent he does so as the agent of the mortgagee.

R. P. Lim. Act, 1833, s. 7 (tenancies at will).

The provisions of the R. P. Lim. Act, 1833, s. 7, relating to tenancies at will, do not apply to mortgages.

Tenancies from year to year.

Creation of tenancies from year to year.

A tenancy from year to year may be created by an instrument in writing or by parol or may be implied by law.

Implied tenancy.

An implied yearly tenancy arises where a tenant takes possession and pays rent, without express provision being made as to the length or terms of the tenancy.

Lessee holding over and paying rent becomes tenant from year to year.

If a tenant remains in possession after the expiration of his lease, with the consent of the lessor, and nothing is said to rebut the inference of law, the tenancy becomes a tenancy from year to year on the terms of the old tenancy so far as applicable; (*e*) if a tenant enters under a lease which is void at law he is liable as tenant from year to year on such of the terms of the lease as are applicable to a yearly tenancy. (*f*)

Terms applicable to a yearly tenancy.

Option to purchase.

Covenants to repair and insure and a proviso for re-entry on non-payment of rent or breach of covenant are applicable to an implied yearly tenancy: Woodfall, 21st ed., 273; but an option to purchase the reversion is not so applicable, hence it lapses when the tenant begins to hold over: *Re Leeds and Batley* [1920], 2 Ch. 548; 89 L. J. Ch. 645.

A lease void for not being under seal operates as an agreement.

A lease which is void under the L. P. Act, 1925, s. 52, as not being under seal, may be sued on as an agreement for a lease and specific performance will be granted: *Zimbler* v. *Abrahams* [1903], 1 K. B. 577; 72 L. J. K. B. 103.

Enforceable contract.

A tenant holding under an agreement for a lease, which can

(*e*) *Right* v. *Darby* (1786), 1 T. R. 159; *Bishop* v. *Howard* (1823), 2 B. & C. 100; 1 L. J. (O. S.) K. B. 243; *Hyatt* v. *Griffiths* (1851), 17 Q. B. 505; *Dougal* v. *McCarthy* [1893], 1 Q. B. 736; 62 L. J. Q. B. 462; *Morgan* v. *Harrison* [1907], 2 Ch. at 143; 76 L. J. Ch. 548; *Wedd* v. *Porter* [1916], 2 K. B. 91; 85 L. J. K. B. 1298; *Croft* v. *Blay* [1919], 2 Ch. 343; 88 L. J. Ch. 545.

(*f*) *Wood* v. *Tate* (1806), 2 Bos. & Pull. N. R. 247; *Eccl. Commrs.* v. *Merral* (1869), L. R. 4 Ex. 162; 38 L. J. Ex. 93; *Martin* v. *Smith* (1874), L. R. 9 Ex. 50; 43 L. J. Ex. 42.

be specifically enforced, holds under the same terms as if the lease had actually been granted: *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9; 52 L. J. Ch. 2; *Manchester Brewery Co.* v. *Coombs* [1901], 2 Ch. 608; 70 L. J. Ch. 814.

Effect of an agreement to grant a lease after the determination of an existing lease.

As the interest formerly known as an *interesse termini* cannot exist after 1925, an agreement for a reversionary lease can be enforced; *semble*, the decision in *Lewis* v. *Baker* [1905], 1 Ch. 46; 74 L. J. Ch. 39, that a tenant holding under a reversionary lease could not distrain for rent against a sub-tenant until by entry the reversionary term commenced, would not be followed, for entry is no longer material, but in other respects a term must have commenced to create a reversion.

Effect of an option for a lease in a yearly tenancy agreement.

If a yearly tenancy agreement provides that the tenant may at his option have a lease for a specified term, but without any stipulation as to the time within which the option must be exercised, the landlord may at any time call on the tenant to exercise the option; if the tenant fails to exercise his option in the time specified, the landlord may determine the tenancy, but until the tenancy is determined the option will continue.(*g*) An option of this kind passes with the tenant's interest, and on his bankruptcy will pass to his trustee in bankruptcy.(*h*)

Where a tenant enters under an agreement for a lease for twelve months with an option for a lease after that period he is entitled to a lease for a year: *Austin* v. *Newham* [1906], 2 K. B. 167; 75 L. J. K. B. 563.

Determination of yearly tenancies.

A yearly tenancy is determinable, except in the case of agricultural holdings, at the end of any year by either party giving six months' notice, and until so determined it will continue from year to year; but there is nothing repugnant to such a tenancy in a stipulation that after the first year it will be determinable upon less than six months' notice or that the notice to be given by one party shall be different to that to be given by the other party, or that apart from notice the tenancy shall be determinable at the discretion of one of the parties (*e.g.*, by the sale of the property by the landlord): *Mayo* v. *Joyce* [1920], 1 K. B. 824; 89 L. J. K. B. 561; *Allison* v. *Scargill* [1920], 3 K. B. 443; 89 L. J. K. B. 1084.

Agricultural Holdings

In the case of agricultural holdings to which the Agr. H.

(*g*) *Hersey* v. *Giblett* (1854), 18 Beav. 174; 23 L. J. Ch. 818; *Moss* v. *Barton* (1866), L. R. 1 Eq. 474.

(*h*) *Buckland* v. *Papillon* (1866), L. R. 2 Ch. 67; 36 L. J. Ch. 81; *Tolhurst* v. *Assoc. of Manufacturers* [1903], A. C. 414; 72 L. J. K. B. 834.

Act, 1923, s. 25 (notice).

Act, 1923, s. 25, applies, the tenancy can only be determined by a notice expiring at the end of twelve months after the year of tenancy in which the notice is given; and any agreement for shorter notice is void.

Power for landlord to determine a tenancy as respects part.

Except in the case of agricultural holdings and independently of L. P. Act, 1925, s. 140 (2), as amended by L. P. (Amend.) Act, 1926, s. 2, a landlord could not determine a tenancy as regards part only of the land comprised therein, thus, where property was sold in two lots and the tenant had not accepted the division of the tenancy, a notice to quit given by the purchaser of one lot was held to be invalid: *Re Bebington* [1921], 1 Ch. 559; 90 L. J. Ch. 269. This decision was met by L. P. Act, 1925, s. 140 (2).

Statutory power, as regards agricultural holdings, to give notice to quit part.

Rights of the tenant under the notice.

In the case of a yearly tenancy of an agricultural holding a landlord may, under Agr. H. Act, 1923, s. 27, give a notice to quit part of the holding with a view to the land being used for any of the purposes mentioned in that section, provided the notice states that it is given for one or more of those purposes. In the absence of any agreement to the contrary the tenant may, within twenty-eight days, treat such notice as a notice to quit the entire holding. If he elects not to treat such notice as notice to quit the entire holding his rent must be adjusted to the new circumstances, and the part of the holding to which the notice relates will be treated as a separate holding for the purpose of compensation under the Agr. H. Act, 1923.

Right of the owner of part of the reversion to give notice to quit that part.

Counter notice under L. P. Act, 1925, s. 140.

If, under the lease, there is a right to give a notice to quit, the owner of a part of the reversion may give the notice as respects that part, but the lessee may within one month determine the lease in regard to the rest of the land by giving a counter notice to the owner of that reversion expiring at the same time as the original notice: L. P. Act, 1925, s. 140 (2).

Rights of agricultural tenant.

Counter notice under L. P. (Amend.) Act, 1926, s. 2.

Compensation rights.

If the land is an agricultural holding the tenant may, within twenty-eight days of the service of the notice, serve on the persons severally entitled to the severed parts of the reversion, a notice that he accepts the original notice as a notice to quit by the owners to take effect at the same time as the original notice. This acceptance takes effect under Agr. H. Act, 1923, s. 12 (7) (d), see L. P. (Amend.) Act, 1926, s. 2, and the tenant may assert his rights to compensation against the lessors affected. There is no hardship in this, for the original owner of the entirety, having disposed of part, has put it in the power of his purchaser to serve the original notice.

SECT. II.—*The rent reserved on leases, and the remedies for its recovery.*

Rent.

The ordinary consideration for a lease is rent, or an annual return in money or in kind reserved to the lessor. A power of distress is incident by common law to rent reserved on leases of real and corporeal property. The right to distrain depends on the possession of the legal reversion: Woodfall, 21st ed., 525, *et seq.*; and is not assignable.(*i*)

Distress.

Distress for rent payable in advance.

When rent is payable in advance the landlord may distrain as soon as it becomes due.(*j*)

Distress before liquidation of company.

Where the tenant, being a limited company, goes into liquidation and before the liquidation the landlord distrains for rent payable in advance, the fact that the rent is payable in advance is no reason for restraining the lessor from proceeding with his distress.(*k*)

Re-entry.

A power of re-entry must be given in a lease where it is required; it is not an incident to leases at common law.

Rent falling due on Sunday.

A distress may be made for rent in arrear between sunrise and sunset on the day following the day on which the rent became due. Rent falling due on Sunday may lawfully be paid on that day, which is not a *dies non* at common law; hence rent falling due on a Sunday may be distrained for on the Monday following: *Child* v. *Edwards* [1909], 2 K. B. 753; 78 L. J. K. B. 1061. Goods cannot be distrained on a Sunday unless this objection is waived.(*l*)

Six years arrears recoverable by distress, except in certain cases.

Except in cases coming within the Agr. H. Act, 1923, or in case of the tenant's bankruptcy, the right of distress for rent in arrear may be exercised at any time within six years from the time when the rent became due or an acknowledgment in writing of the same was made to the landlord or his agent: R. P. Lim. Act, 1833, s. 42; see Carson, 2nd ed., 194, provided that the lease is still subsisting. If the lease has determined, a distress may be made (but not by an execution creditor) at any time within six months from its determination, provided that the landlord's title continues, or his personal representatives are distraining for

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(*i*) Woodfall, 21st ed., 539; for the special rights of distress given to personal representatives: Ad. of E. Act, 1925, s. 26 (3) and (4).

(*j*) *London, &c., Loan Co.* v. *L. & N. W. Ry.* [1893], 2 Q. B. 49; 62 L. J. Q. B. 370.

(*k*) *Venner's Electrical Appliances Ld.* v. *Thorpe* [1915], 2 Ch. 404; 84 L. J. Ch. 925.

(*l*) *Werth* v. *London and Westminster Loan Co.* (1889), 5 T. L. R. 521.

arrears, and the tenant is still in possession.(*m*) In the case of agricultural holdings or market gardens, a landlord may only distrain for one year's arrears: Agr. H. Act, 1923, s. 34; but where the landlord has deferred collecting the rent for a quarter or half year, the later date will be taken as the date when the rent fell due.

Distress for rent on bankruptcy of tenant.

After the bankruptcy of a tenant the landlord can only distrain for six months' rent due prior to the date of adjudication, but he can prove for the surplus rent due.(*n*)

Personal representatives of landlord may distrain.

The personal representatives of a deceased landlord have the same right of distress for rent accrued in his lifetime as the landlord would have had if living: Ad. of E. Act, 1925, s. 26.

Preferential right of landlord over ordinary creditors.

The goods of a tenant cannot be removed by an execution creditor without first paying to the landlord one year's rent in arrear,(*o*) but this preferential right does not exist (like the right of distress) after the tenancy has determined: *Cox* v. *Leigh* (1874), L. R. 9 Q. B. 333; 43 L. J. Q. B. 123.

Right of landlord to seize goods fraudulently removed.

If a tenant fraudulently or clandestinely conveys away goods in order to prevent the landlord from distraining them, the landlord may at any time within thirty days after such conveying away seize the goods wherever they are, and other powers are given by statute in such a case: Distress for Rent Act, 1737, ss. 1–10. This power applies only where the goods would have been distrainable if they had remained on the premises, and cannot be exercised if at the time of seizure the tenancy has determined: *Gray* v. *Stait* (1883), 11 Q. B. D. 668; 52 L. J. Q. B. 412.

Distress for rent due from company which is being wound up cannot be made without consent of court.

Under ss. 142 and 211 of the Coys. (Consol.) Act, 1908, as interpreted by judicial decisions, a distress cannot be levied on the goods of a company which is being wound up, except by leave of the court, in any case where the rent in arrear is a debt due from the company to the landlord, and provable as such. But where a landlord who, as a stranger and not a creditor of the company, seizes goods of the company as being a stranger's goods on the lands of his tenant, this rule does not apply.(*p*) Where execution for rent is levied before the

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(*m*) Landlord and Tenant Act, 1709, ss. 6, 7; *Lewis* v. *Davies* [1914], 2 K. B. 469; 83 L. J. K. B. 598; Ad. of E. Act, 1925, s. 26 (4).

(*n*) Bkcy. Act, 1914, s. 35; Woodfall, 21st ed., 550.

(*o*) Landlord and Tenant Act, 1709, s. 1; *Cox* v. *Harper* [1910], 1 Ch. 480; 79 L. J. Ch. 307.

(*p*) *Re Lundy Granite Co.* (1871), L. R. 6 Ch. 462; 40 L. J. Ch. 588; *Re Traders' N. S. Co.* (1874), L. R. 19 Eq. 60; 44 L. J. Ch. 172; *Re Harpur's, &c., Co.* [1900], 2 Ch. 731; 69 L. J. Ch. 841; Woodfall, 21st ed., 551, *et seq.*

presentation of a winding-up petition the landlord is entitled to full payment of the rent: *Re British Salicylates Ltd.* [1919], 2 Ch. 155; 88 L. J. Ch. 258; this also applies where distress is levied for rent payable in advance.(*q*) Leave will be given to a landlord to distrain for rent accrued after the winding-up, in cases where the company retains possession for the convenience of the winding-up and the realisation of the property to better advantage.(*r*)

In what cases leave will be given.

What goods may be distrained.

All goods found on the premises, whether belonging to the tenant or to a stranger (other than such as are specially protected by the common law or by statute), are distrainable for rent.

Things protected from distress:(*s*) (i) By common law:

Things privileged by common law are—(1) Things annexed to the freehold; (2) Things delivered to a person exercising a public trade to be carried, wrought, worked up, or managed in the way of his trade or employment; (3) Things in actual use, *e.g.*, the horse a man is riding on, or the axe in his hand. Beasts of the plough and implements of husbandry, or of a man's trade or profession, are also privileged, if there is a sufficient distress without them;(*t*) (4) Goods in custody of the law. Though goods seized by the sheriff in execution are exempt from distress, they cannot be removed until the rent in arrear, not exceeding one year's rent, has been paid.(*u*)

(ii) By statute:

Wearing apparel, &c.

By the joint operation of the County Courts Act, 1888, s. 147, and the Law of Distress Amendment Act, 1888, s. 4 (as to rules under this Act, see Distress for Rent Rules, 1888), the wearing apparel and bedding (*v*) of the tenant or his family, and the tools and implements of his trade: *Addison* v. *Shepherd* [1908], 2 K. B. 118; 77 L. J. K. B. 134; to the value of £5:

(*q*) *Venner's Electrical Appliances* v. *Thorpe* [1915], 2 Ch. 404; 84 L. J. Ch. 925.

(*r*) *Re Lundy Granite Co., supra; Re North Yorkshire Iron Co.* (1878), 7 Ch. D. 661; 47 L. J. Ch. 333; *Re South Kensington, &c., Stores* (1881), 17 Ch. D. 161; 50 L. J. Ch. 446; and see *Re Higginshaw & Co.* [1896], 2 Ch. 544; 65 L. J. Ch. 771.

(*s*) Woodfall, 21st ed., 558, *et seq.*; *Prov., &c., Co.* v. *Low Moor, &c., Co.* [1909], 2 K. B. 344; 78 L. J. K. B. 702.

(*t*) *Simpson* v. *Hartopp*, Willes, 512; and see *Clarke* v. *Millwall Dock Co.* (1886), 17 Q. B. D. 494; 55 L. J. Q. B. 378.

(*u*) Landlord and Tenant Act, 1709, s. 1; see *Lewis* v. *Davies* [1914], 2 K. B. 469; 83 L. J. K. B. 598. As to effect of a tenant's bankruptcy on the rights of his landlord under 8 Anne, c. 14, s. 1, see *Re Craig* [1916], 2 K. B. 497; 85 L. J. K. B. 1537; *Re British Salicylates* [1919], 2 Ch. 155; 88 L. J. Ch. 258; Bkcy. Act, 1914, s. 35 (2).

(*v*) "Bedding" includes "bedstead": *Davis* v. *Harris* [1900], 1 Q. B. 729; 69 L. J. Q. B. 232.

Lavell v. *Richings* [1906], 1 K. B. 480; 75 L. J. K. B. 287; are protected from distress, but this privilege does not extend to any case where the interest of the tenant has expired and when possession of the premises in respect of which the rent is claimed has been demanded, and where the distress is made not earlier than seven days after such demand.

National Insurance Act, 1911.

The National Insurance Act, 1911, s. 68, contains restrictions against distress during illness.(*w*)

Rent Restriction Acts, 1920 to 1923.

The Rent Restriction Acts, 1920 to 1923, prohibit distress for rent in certain cases without leave of a county court judge: Woodfall, 21st ed., 537.

Agricultural stock, &c.

Where live stock belonging to another person has been taken in by the tenant of an agricultural holding to be fed at a fair price, such stock cannot be distrained by the landlord, where there is other sufficient distress to be found. If no other sufficient distress can be found, there cannot be taken by distress a sum exceeding the price agreed to be paid for the feeding, or so much of it as remains unpaid. Agricultural or other machinery hired by the tenant, and live stock belonging to others, which is on the premises for breeding purposes, cannot be distrained for rent in arrear.(*x*)

Appraisement.

Sale by auction.

Replevy.

Certified bailiff only can levy distress.

A landlord or other person levying a distress may sell the chattels distrained without causing them to be previously appraised, unless the tenant or owner of the goods requires an appraisement. For the purposes of sale the chattels must, at the request of the tenant or owner of them, be removed to a public auction room or some other fit place and there sold. The tenant or owner may, on giving security for costs, have fifteen days within which to replevy. Distress can only be levied by a bailiff certificated by a county court judge.(*y*)

Law of Distress Amendment Act, 1908.

The landlord's rights of distress against the goods of strangers on the lands of his tenant have been modified by the Law of Distress A. Act, 1908.

Protection of under-tenants, lodgers, &c.

By this Act, with certain exceptions, and after complying with certain provisions, the goods of—

(1) Under-tenants liable to pay by equal instalments not less

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(*w*) Woodfall, 21st ed., 537, 1048, 1050.

(*x*) Agr. H. Act, 1923, s. 35; Law of Distress A. Act, 1908, s. 4 (1).

(*y*) Law of Distress A. Act, 1888, ss. 5, 6 and 7; Law of Distress A. Act, 1895; see *Perring & Co.* v. *Emerson* [1906], 1 K. B. 1; 75 L. J. K. B. 12; Woodfall, 21st ed., 605–608; and see *Gonsky* v. *Durrell* [1918], 2 K. B. 71; 87 L. J. K. B. 836.

often than every actual or customary quarter of a year a rent which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under-tenancy ;

(2) Any lodger ; or

(3) Any other person whatsoever, not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof ;

are protected against distress for rent due to any superior landlord by his immediate tenant, if the under-tenant, lodger, or other person makes a declaration (*a*) that the goods are his property or in his lawful possession and that the immediate tenant has no property or beneficial interest in such goods.(*b*)

Section 4 (1) provides that the Act shall not apply to any live stock to which s. 29 of the Agr. H. Act, 1908, applies ; the latter Act has been replaced by the Agr. H. Act, 1923, s. 35.

Lodger's Goods Protection Act, 1871, how far now operative.

The Lodger's G. P. Act, 1871, is by s. 8 of the Law of Distress A. Act, 1908, repealed wherever and so far as the latter Act applies, but it is difficult to see what cases could now arise under the former Act.

Under the Lodger's G. P. Act, 1871, difficulties frequently arose as to whether a person was a lodger who was protected under the Act, or an under-tenant, who was not. This distinction is now only material in cases where the party seeking relief is not an under-tenant within the meaning of s. 1 (a) of the 1908 Act ; *semble*, the protection afforded by this Act does not apply where rent is payable by the month or week.

Meaning of "lodger."

No exhaustive definition of the word "lodger" has been given, each case must depend upon its own circumstances. The existence of a right of the landlord to exercise control over the premises is the most important factor in determining whether

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(*a*) The declaration need not be one under the Stat. Declarations Act, 1835 . *Rogers* v. *Martin* [1911], 1 K. B. 19 ; 80 L. J. K. B. 208. As to declarations made in respect of goods held under hire-purchase agreements, see *Hackney Furnishing Co.* v. *Watts* (1912), 106 L. T. 676; and *cf. London Furnishing Co.* v. *Solomon* (1912), 106 L. T. 371 ; *Jay's Furnishing Co.* v. *Brand & Co.* [1915], 1 K. B. 458 ; 84 L. J. K. B. 867.

(*b*) See *Chappell* v. *Harrison* (1910), 103 L. T. 594, where it was held that a piano lent at a theatre without consideration was distrainable : *Parsons* v. *Hambridge* [1917], 33 T. L. R. 346, and *cf. Shenstone* v. *Freeman* [1910], 2 K. B. 84 ; 79 L. J. K. B. 982 ; see further Woodfall, 21st ed., 569, 572.

the relationship of landlord and lodger exists.(*c*) A person who does not sleep in the house, but who merely occupies rooms for business purposes, is not a lodger: *Heawood* v. *Bone* (1884), 13 Q. B. D. 179.

Law of Distress Amendment Act, 1908, s. 6.

Section 6 of the Law of Distress Amendment Act, 1908, enables a landlord to require an under-tenant or lodger to pay rent to him where the rent payable by the immediate tenant is in arrear. Personal service of notice to pay the rent is sufficient: *Jarvis* v. *Hemmings* [1912], 1 Ch. 462; 81 L. J. Ch. 290.

Covenant for payment of rent implied.

The words "yielding and paying" in a reservation of rent amount to a covenant for payment,(*d*) but it is usual to insert a formal covenant.

How many years' arrears of rent can be recovered in action on covenant.(*e*)

In cases decided before 1874 it was held that under the R. P. Lim. Act, 1833, s. 42, and the Civil P. Act, 1833, s. 3, taken together, a landlord could recover only six years' arrears of rent by a distress, but might recover twenty years' arrears by an action on the covenant.(*f*)

The R. P. Lim. Act, 1874, does not appear to affect the right to recover, by an action on the covenant, rent reserved on a demise by deed, and accordingly twenty years' arrears of rent are so recoverable.(*g*)

Right to rentcharge barred altogether after twelve years, but not rent reserved by lease in writing.

Under s. 3 of the R. P. Lim. Act, 1833, as amended by s. 1 of the Act of 1874, a rentcharge, chief rent or a quit rent may be lost altogether with any remedy under a personal covenant by non-payment for twelve years,(*h*) but these sections do not apply to rent reserved on a demise.(*i*) The right to rent reserved by deed is not barred by non-payment, so long as the relation of landlord and tenant continues,(*j*) save that, as above stated, the amount to be recovered is limited to six or twenty years' arrears according to the method adopted for recovery.

(*c*) *Ness* v. *Stephenson* (1882), 9 Q. B. D. 245; and *cf.* case on lodger franchise: *Kent* v. *Fittall* (No. 3) [1909], 1 K. B. 215; 78 L. J. K. B. 110.

(*d*) *Giles* v. *Hooper* (1690), Carth. 135; *Bower* v. *Hodges* (1853), 13 C. B. 765; 22 L. J. C. P. 194.

(*e*) See Lightwood, Time Limit on Actions, 174.

(*f*) *Paget* v. *Foley* (1836), 2 Bing. N. C. 679; 5 L. J. C. P. 258; *Hunter* v. *Nockolds* (1850), 1 Mac. & G. 640; 19 L. J. Ch. 177.

(*g*) *Darley* v. *Tennant* (1885), 53 L. T. 257; *Donegan* v. *Neill*, 16 L. R. Ir. 309.

(*h*) *Howitt* v. *Harrington* [1893], 2 Ch. 497; 62 L. J. Ch. 571; *Shaw* v. *Crompton* [1910], 2 K. B. 370; 80 L. J. Ch. 52.

(*i*) *Grant* v. *Ellis* (1841), 9 M. & W. 113, 122; 11 L. J. Ex. 228; *Jones* v. *Withers* (1896), 74 L. T. 572.

(*j*) *Archbold* v. *Scully* (1861), 9 H. L. C. 360; Woodfall, 21st ed., 581.

If, however, a tenant from year to year or other period without a lease in writing remains in possession, and pays *no* rent for twelve years, the right of the landlord to the land is extinguished, and his right to the rent in arrear is extinguished also.(*k*)

Secus, where tenancy is without writing.

Where a lessor grants a lease of premises which he knows are intended to be used for immoral or illegal purposes he cannot recover rent: *Upfill* v. *Wright* [1911], 1 K. B. 506; 80 L. J. K. B. 254.

Lease for immoral or illegal purposes.

Under L. P. Act, 1925, 1st Sch., Pt. II, para. 7 (m), a legal term, which would otherwise have been transferred under the vesting provisions, can be disclaimed by the statutory assignee or his representatives before proceedings have been commenced to recover the rent, &c., and before the term has been dealt with *inter vivos*: L. P. (Amend.) Act, 1926, Sch.

Disclaimer to avoid payment of rent.

According to the common law, rents reserved on a lease and other rents were not apportionable; consequently, if the lessor died between two rent days, the entire rent for the current year, if the lease was a continuing one, went to his heir-at-law or other the person on whom the reversion devolved; and if the lease determined on his death, the whole of the rent for that half-year was lost: 1 Swanston, 337, note, and the cases there cited.

No apportionment of rent by the common law.

Under the Apportionment Act, 1870, rents are to be considered as accruing from day to day, and are apportionable in respect of time: s. 2. The apportioned part is payable when the whole rent becomes due: s. 3. The persons entitled to apportioned parts have the same remedies for recovering them as if entitled to the entirety, but the lessee is not liable for any apportioned part specifically: s. 4.

Provided for by Apportionment Act, 1870.

The Act applies to a specific as well as a residuary devise, and under it a current half-year's rent was apportionable under the old law between the heir or the devisee of the land and the testator's personal estate.(*l*)

The Act does not apply to any sum duly and properly paid or accrued due before the happening of the incident which is said to necessitate the apportionment, hence does not apply to rent which by agreement is payable in advance and has therefore accrued due though in respect of a period during which the

Not applicable to rent payable in advance.

(*k*) R. P. L. Act, 1833, ss. 8, 34, as amended by Act of 1874: *Re Jolly* [1900], 2 Ch. 616; 69 L. J. Ch. 661.

(*l*) *Capron* v. *C.* (1874), L. R. 17 Eq. 288; 43 L. J. Ch. 677; see also *Constable* v. *C.* (1879), 11 Ch. D. 681; 48 L. J. Ch. 621.

tenant's occupation may cease: *Ellis* v. *Rowbotham* [1900], 1 Q. B. 740; 69 L. J. Q. B. 379.

Application of Act to current rent on assignment of lease,

The Act apportions liabilities as well as rights.(*m*) Hence, if a lease is assigned between two rent days, the lessor has a separate right of action against the assignor for the proportion of rent up to the date of the assignment, and against the assignee for the proportion accruing afterwards.(*n*)

or bankruptcy of tenant.

When a tenant becomes bankrupt (*o*) during the currency of a quarter, the quarter's rent is apportionable, and that portion which belongs to the period prior to the adjudication is within s. 35 (1) of the Bkcy. Act, 1914, and the landlord may distrain for it.(*p*)

Contracting out.

The parties may agree that the Apportionment Act, 1870, shall not apply: s. 7; and see *Re Meredith* (1898), 67 L. J. Ch. 409.

Equitable apportionment.

Rents can be equitably apportioned under L. P. Act, 1925, s. 190, which gives powers to enter and distrain to give effect to the apportionment.

SECT. III.—*The covenants usually inserted in leases in relation to rates and taxes, and the preservation, repair, and insurance of the demised property.*

What are usual covenants in a lease.

The "usual"(*q*) covenants in a lease for a term of years are, on the part of the lessee:—

(1) To pay the rent:

(2) To pay rates and taxes, except such as are payable by the landlord by statute:

(3) To keep the demised premises in repair during the term:

(4) To deliver them up in good repair at the end of the term:

(5) To permit the landlord to enter and view the state of repair.

(*m*) *Rochester* v. *Le Fanu* [1906], 2 Ch. 513; 75 L. J. Ch. 743; and see *Re Wilson* (1893), 62 L. J. Q. B. 628; Foà, 6th ed.

(*n*) *Swansea Bank* v. *Thomas* (1879), 4 Ex. D. 94; 48 L. J. Ex. 344. If the assignor is the original lessee the whole rent could be recovered against him under the covenant.

(*o*) The bankruptcy commences when the petition is presented: *Re Bumpus* [1908], 2 K. B. 330; 77 L. J. K. B. 563.

(*p*) *Re Howell* [1895], 1 Q. B. 844; 64 L. J. Q. B. 454. As to the rights of the lessor of a company in liquidation, see *Re South Kensington Stores* (1881), 17 Ch. D. 161; 50 L. J. Ch. 446; *Shackell* v. *Chorlton* (1895), 1 Ch. 378; 64 L. J. Ch. 353, see Wms. on Bkcy., 13th ed.

(*q*) *Hampshire* v. *Wickens* (1878), 7 Ch. D. 555; 47 L. J. Ch. 243, and see *Strelley* v. *Pearson* (1880), 15 Ch. D. 113; 49 L. J. Ch. 406; *Re Lander and Bagley* [1892], 3 Ch. 41; 61 L. J. Ch. 707.

The lessor is also entitled to have inserted a power to re-enter for non-payment of rent, but not for breach of any other covenant.(*r*) Most leases also contain a covenant for insurance against loss or damage by fire. If the lease is of a farm, or market garden, there are generally covenants as to cultivation, so far as such covenants can now be enforced: Agr. H. Act, 1923, s. 30; Woodfall, 21st ed., p. 764. Other covenants are often stipulated for, but cannot be insisted on under an open contract. These will be considered in a subsequent section.

Rates, taxes and other charges.

Covenant by lessee to pay rates and taxes includes sewers rate and land tax but not the landlord's property tax.

A covenant by the lessee to pay "all rates, taxes and assessments payable for or in respect of the demised premises without any exception," includes not only ordinary rates payable by the tenant, but also taxes and assessments imposed by Parliament, and which, in the absence of agreement, a tenant is allowed to deduct from his rent, *e.g.*, sewers rate and land tax.(*s*) The property or income tax is, however, an exception, as the burden is thrown on the lessor notwithstanding any contract to the contrary.(*t*)

Where the lessor covenanted to do external repairs a covenant by the lessee to pay all outgoings was held to be subject to the external repairs being executed at the lessor's expense.(*u*)

Covenant by lessor to pay rates and taxes, &c.

A covenant by the lessor to pay all rates and taxes "now or hereafter to become payable" includes "increased assessment."(*v*)

(*r*) *Blakesley* v. *Whieldon* (1841), 1 Hare, 176; 11 L. J. Ch. 164. It is doubtful whether, in the absence of stipulation, a covenant to do specific repairs after notice could be insisted on.

(*s*) *Amfield* v. *White* (1825), Ry. & Mo. 246; *Manning* v. *Lunn* (1845), 2 Car. & K. 13.

Deduction of income tax.

(*t*) Income Tax Act, 1918, 1st Sch., General Rules, r. 23 (2); *Hancock & Co.* v. *Gillard* [1907], 1 K. B. 47; 76 L. J. K. B. 20; Woodfall, 21st ed., 686, *et seq.* A tenant who pays rent without deducting the property tax is entitled to deduct it from the next payment of rent: *Re Sturmey Motors, Ltd.* [1913], 1 Ch. 16; 82 L. J. Ch. 68; *Re Hayman*, No. 2 [1917], 1 Ch. 545; 86 L. J. Ch. 389; and see Konstam on Income Tax, 55, *et seq.*; but where a tenant omits to deduct money paid in respect of landlord's property tax from his next payment of rent he cannot deduct it subsequently: *Hill* v. *Kirshenstein* [1920], 3 K. B. 556; 89 L. J. K. B. 1128. A tenant need not produce to his landlord evidence of payment of tax: *North London and General Properties* v. *Moy, Ltd.* [1918], 2 K. B. 439; 87 L. J. K. B. 986.

(*u*) *Howe* v. *Botwood* [1913], 2 K. B. 387; 82 L. J. K. B. 569; *Henman* v. *Berliner* [1918], 2 K. B. 236; 87 L. J. K. B. 984.

(*v*) *Salaman* v. *Holford* [1909], 2 Ch. 602; 79 L. J. Ch. 41; and water rate: *Bourn and Tant* v. *Salmon, &c., Ltd.* [1907], 1 Ch. 616; 76 L. J. Ch. 374;

A covenant by the lessor to pay "duties, impositions and outgoings" includes compensation payable under the Licensing (Consolidation) Act, 1910.(*w*)

Tithe rent-charge.

Tithe rentcharge is by the Tithe Act, 1891, payable by the "owner" (see *Peed* v. *King* (1895), 11 T. L. R. 18, that expression includes the owner of a long term) notwithstanding any contract to the contrary, and a covenant to pay tithe rentcharge by way of additional rent is void;(*x*) and so is a covenant to repay to the "owner" any sum expended by him in payment of tithe rentcharge;(*y*) but this does not apply to a tithe rate assessed in respect of houses in the City of London, such assessment not being a tithe rentcharge.(*y*) The Act does not apply (s. 9 (2)) to "a rentcharge payable under the Extraordinary Tithe Redemption Acts, 1886 and 1897, nor to a rentcharge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor to a sum or rate payable for each head of cattle or stock turned on land subject to common rights or held or enjoyed in common," and (see s. 10 (1)) the Act does not apply to a rentcharge issuing out of land of a railway company.(*z*)

As to charges thrown by Act of Parliament on the owner; *e.g.*, paving and draining expenses.

A covenant by the tenant limited to "rates, taxes and assessments" does not apply to charges imposed by an Act of Parliament on the owner, though as an additional security power is given to levy them against the tenant, *e.g.*, the expense of paving and sewering a street or abating a nuisance under the Metropolis Management or the Public Health Acts: *Baylis* v. *Jiggens* [1898], 2 Q. B. 315; 67 L. J. Q. B. 793; whether imposed before or after the date of the lease: *Lumby* v. *Faupel* (1904), 90 L. T. 140. But charges of this kind will be within the

"Duties," "charges," &c.

covenant, if the word "duties," "charges," "impositions" or "outgoings" is added to "rates, taxes and assessments."(*a*) It makes no difference that the term is a short one, *e.g.*, for three years only: *Re Warriner* [1903], 2 Ch. 367; 72 L. J. Ch. 701.

Cost of complying

As between a tenant for life and remainderman, the cost of

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and see *Re Floyd* [1897], 1 Ch. 633; 66 L. J. Ch. 350; *Drieselman* v. *Winstanley* (1909), 53 Sol. J. 631.

(*w*) *Wooler* v. *N. E. Breweries* [1910], 1 K. B. at p. 251; 79 L. J. K. B. 138, a case on the Act of 1904.

(*x*) *Ludlow* v. *Pike* [1904], 1 K. B. 531; 73 L. J. K. B. 274; *Tuff* v. *Drapers' Co.* [1913], 1 K. B. 40; 82 L. J. K. B. 174.

(*y*) *Re Salter and Awdry* [1921], 2 Ch. 141; 90 L. J. Ch. 459.

(*z*) As to the law before the 1891 Act, see Woodfall, 21st ed., 687.

(*a*) See *Greaves* v. *Whitmarsh & Co.* [1906], 2 K. B. 340; 75 L. J. K. B. 633, and cases there cited.

complying with sanitary and dangerous structure notices is chargeable against income: *Re Copland* [1900], 1 Ch. 326; 69 L. J. Ch. 240, unless the work is an improvement within S. L. Act, 1925, 3rd Sch.

with sanitary, &c., notices.

The preservation, repair and insurance of the demised property.

Tenant liable for actual waste.

Primarily every tenant for a term of years, or from year to year, or at will, is liable at law for damage caused by actual waste, *e.g.*, pulling down houses or walls, cutting timber, cutting fruit trees in a garden or orchard, opening mines, altering the nature of the property by converting meadow into arable, &c.(*b*) But no action for waste will lie unless there is injury to the capital in one of the following ways, viz., by diminishing the value of the estate, or increasing the burden on it, or destroying identity and thus impairing the evidence of title.(*c*) Thus it is not waste to erect new buildings whereby the value of the estate is increased,(*d*) or to pull down a ruinous barn without rebuilding it, if the estate is not injured thereby: *Doe* v. *Burlington* (1833), 5 B. & Ad. 507; or to use land as arable where it has not been used previously as permanent pasture: *Rush* v. *Lucas* [1910], 1 Ch. 437; 79 L. J. Ch. 172; but alteration of and injury to the estate by shooting rubbish on it is not the less waste because it may result in a greater countervailing advantage by raising low-lying land above the water-level.(*e*)

What is waste?

Waste not the less so because it produces counter-vailing advantage.

An act of waste by a tenant is a present injury to the reversion, for which the lessor may bring an action during the term.(*f*) This right of action, being in respect of a tort, is not assignable. There is no covenant against waste implied by a tenancy: *Defries* v. *Milne* [1913], 1 Ch. 98; 82 L. J. Ch. 1.

Action may be brought by reversioner during the term.

Liability for permissive waste.

The estate and effects of a tenant for life (*g*) are liable

(*b*) Co. Litt. 53a; *Simmons* v. *Norton* (1830), 7 Bing. 640; 9 L. J. (O. S.) C. P. 185, and see *St. Albans* v. *Skipwith* (1845), 8 Beav. 354; 14 L. J. Ch. 247. *Semble*, the pasture must be ancient: *Goring* v. *G.* (1876), 3 Swanst. 661; but see *Clarke-Jervoise* v. *Scutt* [1920], 1 Ch. 382; 89 L. J. Ch. 218. As to tenant's express and implied covenants to repair, see Woodfall, 21st ed., 740.

(*c*) *Doe* v. *Burlington* (1833), 5 B. & Ad. 507; 3 L. J. K. B. 26. The meaning of destroying identity has been brought within very narrow limits, see *Doherty* v. *Allman* (1878), 3 A. C. 709.

(*d*) *Jones* v. *Chappell* (1875), L. R. 20 Eq. 539; 44 L. J. Ch. 658; *Meux* v. *Cobley* [1892], 2 Ch. 253; 61 L. J. Ch. 449.

(*e*) *West Ham, &c., Bd.* v. *E. London Waterworks* [1900], 1 Ch. 624; 69 L. J. Ch. 257.

(*f*) *Queen's Coll., Oxford* v. *Hallett* (1811), 14 East. 489; *London Corpn.* v. *Hedger* (1810), 18 Ves. 355.

(*g*) As to waste by a tenant for life, see also Chapter on Settlements, p. 81.

to the remainderman for permissive waste if the tenant for life was bound to keep the premises in repair : *Woodhouse* v. *Walker* (1880), 5 Q. B. D. 404 ; 49 L. J. Q. B. 609 ; but in the absence of any such express obligation the estate of a tenant for life is not liable for permissive waste : *Re Cartwright* (1889), 41 Ch. D. 532 ; 58 L. J. Ch. 590. The estate of a tenant for life of leaseholds, where the leases contain covenants to keep and deliver up the premises in good repair, is not liable to the remainderman for breaches occurring during the subsistence of the life interest : *Re Parry* [1900], 1 Ch. 160 ; 69 L. J. Ch. 190. Apparently a lessee for a term of years is liable for permissive waste, but this is not entirely free from doubt : *Davies* v. *D.* (1888), 38 Ch. D. 499 ; 57 L. J. Ch. 1093.

A tenant at will is not liable for permissive waste.(*h*) A tenant from year to year is bound to keep the premises wind and water tight, but not to do substantial repairs, such as new roofing.(*i*)

Construction of covenants to repair.

Under a general covenant by a lessee to keep the premises in good repair and to deliver them up in good repair and condition at the end of the term, it is not sufficient to keep them in the same state of repair as they were in at the commencement of the term, if they were then in bad repair. The class and description of the house may, however, be taken into account, viz., whether it is an old or a new one, and it must be kept and delivered up in good repair with reference to the class to which it belongs.(*j*) "Good tenantable repair" means such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a tenant of the class who would be likely to take it.(*k*) If a tenant takes a house which is of such a kind that by its own inherent nature it will in the course of time fall into a particular condition, *e.g.*, if it is built on boggy soil without proper foundations, its falling into that condition is not

"Good tenantable repair."

(*h*) *Shrewsbury's Case* (1600), 5 Co. Rep. 13b ; *Harnett* v. *Maitland* (1847), 16 M. & W. 257 ; 16 L. J. Ex. 134.

(*i*) *Ferguson* v. —— (1797), 2 Esp. 590 ; *Anworth* v. *Johnson* (1832), 5 Car. & P. 239 ; *Leach* v. *Thomas* (1835), 7 *ib.*, 327 ; and see Woodfall, 21st ed., 767.

(*j*) *Gutteridge* v. *Munyard* (1834), 1 M. & Rob. 334 ; *Stanley* v. *Towgood* (1836), 3 Bing. N. C. 4 ; 6 L. J. C. P. 129 ; *Brown* v. *Trumper* (1858), 26 Beav. 11 ; *Payne* v. *Haine* (1847), 16 M. & W. 541 ; 16 L. J. Ex. 130 ; *Easton* v. *Pratt* (1863), 2 H. & C. 676 ; 33 L. J. Ex. 233.

(*k*) *Proudfoot* v. *Hart* (1890), 25 Q. B. D. 42 ; 59 L. J. Q. B. 389 ; and see *London Corpn.* v. *G. W. Ry.* [1910], 2 Ch. 314 ; 79 L. J. Ch. 622.

a breach of the covenant to repair.(*l*) The principle of these decisions applies equally to a covenant by the lessor: *Torrens* v. *Walker* [1906], 2 Ch. 166; 75 L. J. Ch. 645. A covenant to keep in good repair imposes an obligation to put in repair premises which at the time of the demise were not in repair.(*m*)

Acts of the King's enemies.

A lessee who has covenanted to repair the demised premises must repair damage caused through enemy action: *Redmond* v. *Dainton* [1920], 2 K. B. 256; 89 L. J. K. B. 910. Where a lessee covenants to execute specific repairs in a particular year, if the lease shall be then subsisting, the obligation to perform the covenant attaches as soon as the year begins: *Kirklinton* v. *Wood* [1917], 1 K. B. 332; 86 L. J. K. B. 319. The lessee may remain liable on a covenant, the performance of which has been rendered impossible by an act of the State: *Matthey* v. *Curling* [1922], 2 A. C. 180; 91 L. J. K. B. 593. An agreement to keep premises in as good repair as they were in at the time of letting is broken by the tenant allowing them to become verminous: *Jones* v. *Joseph* [1918], 87 L. J. K. B. 510. No covenant to build can be implied from a covenant to repair where there is already an express covenant to build, both as to the time and mode of building; the court disapproved of the dictum of Stirling, J., to the contrary in *Jacob* v. *Down* (note (*m*)). Waiver of forfeiture for not building in accordance with such a covenant carries with it a waiver of forfeiture for breach of a covenant to repair those buildings if and when erected.(*n*)

Impossibility of performance.

To keep in repair.

Implied covenants to build.

Waiver of forfeiture.

Measure of damages on breach of covenant to deliver up in repair.

Where an action is brought at the end of the term on the covenant to deliver up in repair, the measure of damages is the sum which it will take to put the premises in the state of repair in which the tenant ought to have left them,(*o*) and this is so, though by reason of some arrangement between the landlord and a third party the landlord suffers no loss from the want of repair.(*p*)

(*l*) *Lister* v. *Lane* [1893], 2 Q. B. 212; 62 L. J. Q. B. 583; *Wright* v. *Lawson* (1903), W. N. 108.

(*m*) *Payne* v. *Haine, supra*; *Jacob* v. *Down* [1900], 2 Ch. 156, 161; 69 L. J. Ch. 493; and see *Lurcott* v. *Wakeley* [1911], 1 K. B. 905; 80 L. J. Ch. 713, where the tenant had to rebuild a front wall which had become dangerous from age.

(*n*) *Stephens* v. *Junior A. & N. Stores* [1914], 2 Ch. 516; 84 L. J. Ch. 56.

(*o*) *Ebbetts* v. *Conquest* [1895], 2 Ch. 377; 64 L. J. Ch. 702; and see *Clare* v. *Dobson* [1911], 1 K. B. 35; 80 L. J. K. B. 158.

(*p*) *Joyner* v. *Weeks* [1891], 2 Q. B. 31; 60 L. J. Q. B. 510; *Henderson* v. *Thorn* [1893], 2 Q. B. 164; 62 L. J. Q. B. 586.

All the circumstances of the case will be taken into consideration in assessing the damages recoverable by a covenantee during the currency of a lease in respect of a breach of the covenant to keep the demised premises in repair. In the case of an underlease, when the underlessee has notice that there is a superior landlord, the sub-lessor's liability to that landlord must be taken into account, and the cost of putting the property into repair at the end of the term may properly be considered for that purpose.(q)

A covenant to deliver up in repair does not deprive a lessee of his right to remove trade fixtures put up by him under a covenant in the lease: *Mowats* v. *Hudson* (1911), 105 L. T. 400.

In default of an express covenant, no covenant against waste is implied by a tenancy.(r)

Relief as to decorative repairs.

The court has power, under L. P. Act, 1925, s. 147, to grant relief when notice is served requiring internal decorative repairs to be effected.

No warranty by landlord as to condition of unfurnished house.

A tenant who is under no obligation to do repairs cannot, in the absence of express stipulation, require the landlord to do them, nor is it any defence to an action by the landlord for rent that the house is uninhabitable for want of substantial repairs,(s) or by reason of its being infested with noxious insects, or for any other reason, there being no implied warranty as to its condition in a demise of an unfurnished house.(t) A different rule applies to a furnished house, in which case there is an implied condition that the house at the time of the letting is reasonably fit for habitation,(u) but not that it shall continue so during the whole of the letting: *Sarson* v. *Roberts* [1895], 2 Q. B. 395; 65 L. J. Q. B. 37.

Secus, if the house is furnished.

(q) *Conquest* v. *Ebbetts* [1896], A. C. 490; 65 L. J. Ch. 808; and see *Ebbetts* v. *Conquest* (1900), 82 L. T. 561.

(r) *Defries* v. *Milne* [1913], 1 Ch. 98; 82 L. J. Ch. 1; this decision overrules the dictum to the contrary in *Whitham* v. *Kershaw* (1885), 16 Q. B. D. at p. 616.

(s) *Arden* v. *Pullen* (1842), 10 M. & W. 321; 11 L. J. Ex. 359; *Gott* v. *Gandy* (1853), 2 E. & B. 845; 23 L. J. Q. B. 1; see *Broggi* v. *Robins* (1899), 15 T. L. R. 224, a decision which may be questioned.

(t) *Hart* v. *Windsor* (1843), 12 M. & W. 68; 13 L. J. Ex. 129; *Manchester Bonded Warehouse Co.* v. *Carr* (1880), 5 C. P. D. 507; 49 L. J. C. P. 809. As to express warranty collateral to a lease, see *De Lassalle* v. *Guildford* [1901], 2 K. B. 215; 70 L. J. K. B. 533; *Angel* v. *Jay* [1911], 1 K. B. 667; 80 L. J. K. B. 458; and see also *Milch* v. *Coburn* (1911), 55 Sol. J. 441.

(u) *Smith* v. *Marrable* (1843), 11 M. & W. 5; 12 L. J. Ex. 223; *Wilson* v. *Finch Hatton* (1877), 2 Ex. D. 336; 46 L. J. Ex. 489; *Harrison* v. *Malet* (1886), 3 T. L. R. 58.

Part occupation.

Where the lessor lets part of a house and retains the other part, the authorities appear to be in conflict as to his liability to keep in repair that part of the house which he retains; the best opinion is that a lessor is under no liability as regards a patent danger to the lessee, even though it may be due to his negligence, unless the demised portion of the premises cannot be used without undergoing the risk of accident. In this case the danger is of the nature of a concealed trap, and the lessor is liable for any accident which may occur.

Concealed defect.

A lessor is liable for any damage to the lessee caused by a concealed trap of which he did not warn the lessee. The lessor is therefore liable to keep a common flight of steps in repair, where they must be used by the inhabitants of the demised premises.(*v*) A landlord is not liable to a stranger for an accident caused through a patent danger due to the landlord's neglect: Housing, &c., Act, 1909, s. 15.

Farm.

A tenant of a farm takes the property as he finds it, and the lessor is not responsible for damage done by trees which overhang the farmhouse when the lease was granted: *Cheater* v. *Cater* [1918], 1 K. B. 247; 87 L. J. K. B. 449.

Implied condition in letting of habitation for the working classes.

There is an exception to the general rule in the case of the "letting of a house or part of a house for habitation by persons of the working classes," with respect to which it is provided by the Housing, &c., Act, 1890, s. 75, that in any contract for such letting there shall be implied a condition (notwithstanding any stipulation in a lease made after the 13th August, 1903, see Housing, &c., Act, 1903, s. 12) that the house is at the commencement of the holding and also shall during the subsistence of the tenancy (*Lucy* v. *Bawden* [1914], 2 K. B. 318; 83 L. J. K. B. 523) continue in all respects reasonably fit for human habitation. It is not a breach of this condition if rats invade the house from without, in considerable numbers; *semble*, it might be a breach, if the rats lived and were accustomed to breed in the house: *Stanton* v. *Southwick* [1920], 2 K. B. 642; 89 L. J. K. B. 1066. Section 14 of the Housing and Town, &c., Act, 1909, restricts this exception where a house is let after the 2nd December, 1909, for not less than three years, with a condition that it will be made by the lessee reasonably fit for occupation, and the lease is not to be determinable before the end of the term: See an article on the Housing, &c., Act, 1909,

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(*v*) See *Dunster* v. *Hollis* [1918], 2 K. B. 795; 88 L. J. K. B. 331, where all the authorities are reviewed.

in 54 Sol. J. 229. This condition applies as between the landlord and tenant only; the landlord is not liable for injury caused by breach of this condition to any member of the tenant's family: *Ryall* v. *Kidwell* [1914], 3 K. B. 135; 83 L. J. K. B. 140; *Middleton* v. *Hall* (1913), 108 L. T. 804. Section 14 also substitutes rents of £40 in the county of London, £26 in cases of a borough with a population of 50,000 and over, and £16 elsewhere, for those formerly necessary to be within that exception: See Poor Law, &c., Act, 1869, s. 3.

Penalty for re-letting a house in respect of which a closing order is in force.

Any person letting, or attempting to let as a dwelling-house, a house in respect of which a closing order is in force, is liable to a fine of £20: H. & T. P. Act, 1919, s. 32.

Application of the Housing Acts to the New Forest.

The application of the Housing Acts has been extended to the New Forest: H. & T. P. Act, 1919, s. 37.

Power for local authorities to provide for the sanitation of tenement dwellings.

By the H. & T. P. Act, 1919, s. 26, local authorities have power to make and enforce bye-laws under the Pub. Health Act, 1875, s. 90, and under the Public Health (London) Act, 1891, s. 94, in respect of the health, sanitation and safety of houses divided into separate tenements and used as working class dwellings.

Agricultural holdings, power to view.

The Agr. H. Act, 1923, s. 28, gives to the landlord, or any person authorised by him, power to enter at all reasonable times for the purpose of viewing the state of the holding.

Liability of tenant in case of fire.

14 Geo. 3, c. 78.

As regards destruction by fire, it is provided by the Fires Prevention (Metropolis) Act, 1774, s. 86, that no action, suit or process shall be had or prosecuted against any person in whose house or building or on whose estate any fire shall *accidentally* begin, or any recompense be made by such person for any damage suffered thereby; but agreements between landlord and tenant are excepted. This enactment extends to the whole kingdom: *Sinnot* v. *Bowden* [1912], 2 Ch. 414; 81 L. J. Ch. 832.

Lessee not bound to rebuild in case of fire, but must do so under general covenant to repair.

In the absence of any special stipulation, the lessee is not bound to rebuild a house accidentally burnt down, but if he enters into a general covenant to repair, without any exception, he is liable to restore any house or buildings which may be destroyed by fire, tempest, lightning, or any other accident.(*w*) A fire caused by negligence has been held not to be accidental within the meaning of the above enactment: *Filliter* v. *Phippard* (1847), 11 Q. B. 347; 17 L. J. Q. B. 89.

(*w*) *Pym* v. *Blackburn* (1796), 3 Ves. 34; *Terrell* v. *Murray* (1901), 17 T. L. R. 570.

Lessee liable for rent though house has been burnt down.

Where there is no obligation on either party to insure, the lessee remains liable for his rent, though the house has been burnt down;(x) under the general law he has no equity to compel the lessor to expend the money received from an insurance office in rebuilding.(y) But these decisions must be considered in connexion with s. 83 of the Fires Prevention (Metropolis) Act, 1774, which authorises and requires directors of insurance offices, on the request of *any person interested* in or entitled to any houses or buildings which may be burnt down or damaged by fire, to cause the insurance money to be laid out in rebuilding.(z) Hence, if the lessee had required the directors of the insurance company, before they paid over the money to the lessor, to apply it in rebuilding, they would have been bound to do so.(a)

Effect of request to insurance society to lay out in rebuilding.

Application of insurance money after 1925.

Insurance money received after 1925 by a trustee or a beneficiary from a policy maintained under any power or obligation must be dealt with or applied in accordance with the rules laid down in T. Act, 1925, s. 20.

Proper form of covenant by lessee for insurance.

A lease should expressly provide for insurance. If it is arranged that the lessee shall insure, covenants should be inserted stating in whose name the insurance is to be, and whether the whole or what part of the premises is to be insured, and to what extent. The name of the office or underwriter should also be inserted or provisions made that it shall be one approved by the lessor, and the lessee should be bound to produce the policy and the receipts for the premiums.

Construction of covenant.

A covenant to insure in the joint names of the lessor and lessee is substantially performed if the insurance is in the name of the lessor only: *Havens* v. *Middleton* (1853), 10 Hare, 641; 22 L. J. Ch. 746; but not if the insurance is only in the name of the lessee: *Doe* v. *Gladwin* (1845), 6 Q. B. 953; 14 L. J. Q. B. 189; a covenant to insure in the name of the lessor is broken by the lessee adding his own name: *Penniall* v. *Harborne* (1848), 11 Q. B. 368; 17 L. J. Q. B. 94.

(x) 2 Saund. Rep. by Williams, 422 (a), n; *Belfour* v. *Weston* (1786), 1 T. R. 310; *Holtzapffel* v. *Baker* (1811), 18 Ves. 115.

(y) *Leeds* v. *Cheetham* (1827), 1 Sim. 146; 5 L. J. (O. S.) Ch. 105; *Lofft* v. *Dennis* (1859), 1 El. & El. 474; 28 L. J. Q. B. 168.

(z) This provision is not limited in its operation to the metropolitan districts: *Ex p. Gorely* (1864), 4 D. J. & S. 477; 34 L. J. Bk. 1; *Re Quicke* [1908], 1 Ch. 887; 77 L. J. Ch. 523, and see 54 Sol. J. 357; also *Sinnott* v. *Bowden* [1912], 2 Ch. 414; 81 L. J. Ch. 832.

(a) *Simpson* v. *Scottish, &c., Co.* (1863), 1 H. & M. 618; 32 L. J. Ch. 329.

Aircraft.

A covenant to insure in a named office involves a liability to effect such a policy as is usual with the office at the date of the lease, or such a policy as may from time to time be usual during its currency. Where an insurance office had never insured against aircraft risks, the covenantee could not require the covenantor to effect such an insurance; but where premises were destroyed by enemy aircraft the words "loss or damage by fire" were held to render the covenantor liable.(b)

Covenants to insure in underlease.

In the case of an underlease, where the sub-lessor is himself bound to insure, the covenant in the underlease, if entered into by the under-lessee, should be made to correspond with that in the superior lease. Sometimes the arrangement is that the underlessor shall continue to insure as required by the superior lease, and an additional rent is reserved equal in amount to the annual premium.

Exception of damage by fire from covenant to repair.

If it is not intended that the lessee shall insure, the covenant by him to repair should except accidents by fire. If it is intended that any of the repairs should be done by the lessor, this must be expressly provided for.

The benefit of a covenant to insure runs with the land: *Vernon* v. *Smith* (1821), 5 B. & Ald. 1.

Covenants in farm leases.

In agricultural leases, covenants as to cultivation were usually inserted with the object of preventing the land from being impoverished, or the farm otherwise deteriorated by bad or negligent farming. This can now be only applied as regards arable land to the last year of a tenancy, except in the case of a yearly tenancy: Agr. H. Act, 1923, s. 30.

Common law liability of tenant.

Apart from express covenant it is, by common law, the duty of every tenant of agricultural land to cultivate the land in a good and husband-like manner according to the custom of the country; he is not, however, bound to deliver up the land at the end of the tenancy in a clean and proper condition, properly tilled and manured; nor is he necessarily bound to leave the land in the same condition as when he took it. Where a tenant commits a breach of his common law duty he is liable, in damages, for the injury done to the reversion.(c) As to compensation to landlord for diminished value of an agricultural holding: *ib.*, s. 20.

(b) *Enlayde* v. *Roberts* [1917], 1 Ch. 109; 86 L. J. Ch. 149; *Upjohn* v. *Hitchins* [1918], 2 K. B. 48; 87 L. J. K. B. 1206.

(c) *Williams* v. *Lewis* [1915], 3 K. B. 493; 85 L. J. K. B. 40; *Wedd* v. *Porter* [1916], 2 K. B. 91; 85 L. J. K. B. 1298; and see Agr. H. Act, 1923, s. 30.

SECT. IV.—*Covenants restrictive of the use of the demised property and covenants against assignment or underletting without the lessor's consent, and the lessor's covenant for quiet enjoyment.*

Restrictive covenants.

Covenant not to carry on trades, &c.

A lease of a house often provides that the lessee shall not carry on or permit (*d*) particular trades to be carried on upon the premises.(*e*) A covenant that the premises shall be used as a private dwelling-house only is broken by permitting the house to be used as a school (*f*) or charitable institution for the board and education of children,(*g*) or as a building to be let in residential flats,(*h*) or as a boarding-house.(*i*) It probably prevents letting lodgings, especially if such letting involves the carrying on of the business of a lodging-house keeper;(*j*) but such a covenant does not bind the covenantor to commence an action to restrain his sub-tenant of which the outcome is doubtful; nor is it a breach for the covenantor to advise his sub-tenant as to his legal position upon the breach of such a covenant.(*k*) The erection of a hoarding is an offensive trade.(*l*)

Warranty.

A covenant to use premises only for private residential purposes but so that the lessee shall be entitled to carry on a high-class boarding establishment implies a warranty by the lessor that the premises can be so used under his title.(*m*)

Not to do act which may be an annoyance to neighbours.

A covenant "not to do any act which may be or grow to the annoyance, nuisance, grievance, or damage of the lessor or the inhabitants of the neighbouring houses" is broken by the establishment of a hospital for diseases which may not unreasonably cause some apprehension of risk to the neighbours; (*n*)

(*d*) *Prothero* v. *Bell* (1906), 22 T. L. R. 370; and see *Ricketts* v. *Enfield Churchwardens* [1909], 1 Ch. 544; 78 L. J. Ch. 294.

(*e*) See *Wartski* v. *Meaker*, 110 L. T. 473, on the construction of a covenant restricting the use of premises for the business of a hosier.

(*f*) *Wickenden* v. *Webster* (1856), 6 El. & Bl. 387; 25 L. J. Q. B. 264.

(*g*) *German* v. *Chapman* (1877), 7 Ch. D. 271; 47 L. J. Ch. 250.

(*h*) *Rogers* v. *Hosegood* [1900], 2 Ch. 388; 69 L. J. Ch. 652; *Day* v. *Waldron*, 88 L. J. K. B. 937.

(*i*) *Hobson* v. *Tulloch* [1898], 1 Ch. 424; 67 L. J. Ch. 205.

(*j*) See Woodful, 21st ed., 840; *Rolls* v. *Miller* (1884), 27 Ch. D. 71, at p. 88; 53 L. J. Ch. 682.

(*k*) *Berton* v. *Alliance Investment Co.* [1922], 1 K. B. 742; 91 L. J. K. B. 748.

(*l*) *Nussey* v. *Provincial, &c., Co.* [1909], 1 Ch. 734; 78 L. J. Ch. 539.

(*m*) *Milch* v. *Coburn* (1911), 55 Sol. J. 441; C. A., Cozens-Hardy, M.R., dissenting.

(*n*) *Tod-Heatly* v. *Benham* (1889), 40 Ch. D. 80; 58 L. J. Ch. 83; see also *Wauton* v. *Coppard* [1899], 1 Ch. 92; 68 L. J. Ch. 8. A fried-fish shop is an

Fried fish.

to carry on a hospital for surgical treatment of tuberculosis is not a breach of this covenant but is a breach of a covenant not to use the premises otherwise than as a private dwelling-house.(o) The erection of a staircase which interferes with privacy is not a breach of a covenant against causing nuisance: *Browne* v. *Flower* [1911], 1 Ch. 219; 80 L. J. Ch. 181.

Not to use premises as a public-house, &c.

A covenant prohibiting the use of premises as a public-house, or a beer-house, is not broken by the sale of beer by retail, under a licence "not to be drunk on the premises," the terms "public-house" and "beer-house" having acquired a technical meaning;(p) but if the term "beer-shop" is used, a sale of beer to be drunk off the premises is a breach of the covenant: *Nicoll* v. *Fenning* (1881), 19 Ch. D. 258; 51 L. J. Ch. 166. For a grocer to sell wine or spirits in bottles is a breach of covenant "not to use premises for the sale of spirituous liquors": *Feilden* v. *Slater* (1869), L. R. 7 Eq. 523; 38 L. J. Ch. 379; but in a similar case where there was a covenant "not to carry on the trade of a seller of wine and spirituous liquors" the court refused to interfere.(q)

Restrictive covenants part of a scheme can be enforced against landlord.

Where there are similar restrictive covenants in the leases of adjoining houses, indicating a general scheme as to the user of the property by the tenants, this may imply a reciprocity of obligation as against the landlord. Thus, one of a set of tenants covenanting to use the premises as a private residence can restrain the landlord from converting a house comprised in the same building scheme into an hotel: *Spicer* v. *Martin* (1888), 14 A. C. 12; 58 L. J. Ch. 309; or from converting part of a building of residential flats into a club.(r) It is, however, necessary to establish that a "building scheme" does subsist.(s)

"Building scheme" essentials.

"annoyance"; *Errington* v. *Birt* (1911), 105 L. T. 373; *Adams* v. *Ursell* [1913], 1 Ch. 269; 82 L. J. Ch. 157. For the meaning of an "adjoining shop," see *Derby Motor Cab Co.* v. *Crompton and Evans* (1913), 57 Sol. J. 701.

(o) *Frost* v. *King Edward VII Welsh Memorial* [1918], 2 Ch. 180; 87 L. J. Ch. 561.

(p) *Pease* v. *Coats* (1866), L. R. 2 Eq. 688; 36 L. J. Ch. 57; *Holt* v. *Collyer* (1881), 16 Ch. D. 718; 50 L. J. Ch. 311; Beerhouse Acts, 1830, 1834.

(q) *Jones* v. *Bone* (1870), L. R. 9 Eq. 674; 39 L. J. Ch. 405, but see *Buckle* v. *Fredericks* [1890], 44 Ch. D. 244. As to a covenant restricting a business to that of a hosier, see *Wartski* v. *Meaker* (1914), 110 L. T. 473.

(r) *Hudson* v. *Cripps* [1896], 1 Ch. 265; 65 L. J. Ch. 328; see also *Jaeger* v. *Mansions Consold.* (1903), 87 L. T. 690; Woodfall, 21st ed., 834, *et seq.*

(s) As to the four requirements laid down by Parker, L. J.: *Elliston* v. *Reacher* [1908], 2 Ch. 374, 384; on appeal, 665.

Covenants against assignment or underletting.

Not to assign or underlet without lessor's consent.

Construction of such a covenant.

Trustees in bankruptcy.

A lease frequently contains a covenant not to assign or underlet without the lessor's consent. Such a covenant does not prevent a bequest by Will,(*t*) or the letting of lodgings, where the covenantor retains possession: *Doe* v. *Laming* (1814), 4 Camp. 77. Nor does it extend to a deposit of a lease by way of security,(*u*) nor to a declaration of trust,(*v*) nor to an alienation by operation of law, *e.g.*, by bankruptcy or by judgment, even where the judgment is preceded by a warrant of attorney to confess judgment given by the debtor.(*w*) A trustee in bankruptcy having become entitled by operation of law may afterwards sell and assign, in the discharge of his duty, without committing a breach of the covenant.(*x*) In the case of voluntary or involuntary liquidation of a company, the liquidator acts as the agent of the company and is bound by restrictions against assignment or sub-letting without consent: *Re Farrow's Bank* [1921], 2 Ch. 164; 90 L. J. Ch. 465. The personal representatives of a lessee are bound by the covenant;(*y*) and so are his assigns: *Goldstein* v. *Sanders* [1915], 1 Ch. 549; 84 L. J. Ch. 386; the waiver of a notice to quit creates a new tenancy: *Tayleur* v. *Wildin* (1868), L. R. 3 Ex. 303. In *Freeman* v. *Evans* [1922], 1 Ch. 36; 91 L. J. Ch. 195, it was held that the withdrawal of a notice to quit by a tenant against his sub-tenant was a breach of his covenant with the head landlord not to underlet.

Underlease not a breach of covenant against assignment.

An underlease is not a breach of a covenant not to assign;(*z*)

Effect of bequest after 1925.

(*t*) *Fox* v. *Swann* (1655), Sty. 482; *Doe* v. *Bevan* (1815), 3 M. & S. 353. After 1925 the bequest could only take effect in equity; the legal term would pass by an assent in writing by the executors, which would relate back to the testator's death unless a contrary intention was shown; the will does not come on the title.

(*u*) *Doe* v. *Hogg* (1824), 4 D. & Ry. 226; 2 L. J. (O. S.) K. B. 121. For the mode of realising a mortgage by deposit: L. P. Act, 1925, ss. 90, 91.

Vesting declaration.

(*v*) *Gentle* v. *Faulkner* [1900], 2 Q. B. 267; 69 L. J. Q. B. 777. But if under a power to appoint a new trustee a vesting declaration is made a licence would be required: T. Act, 1925, s. 40 (4), otherwise the vesting will not take effect: *ib.*

(*w*) *Doe* v. *Carter* (1798), 8 T. R. 57; *Croft* v. *Lumley* (1857), 6 H. L. C. 672; 27 L. J. Q. B. 321; *Re Riggs* [1901], 2 K. B. 16; 70 L. J. K. B. 541; but see *Re Cotgrave* [1903], 2 Ch. 705; 72 L. J. Ch. 777.

(*x*) *Goring* v. *Warner* (1724), 2 Eq. Cas. Ab. 100; *Doe* v. *Bevan* (1815), 3 M. & S. 353; see also *Ex p. Blackett* (1894), 1 Manson, 54.

Burden of covenants binding land.

(*y*) *Roe* v. *Harrison* (1788), 2 T. R. 425. If the covenant is entered into after 1925, neither the personal representatives or assigns need be expressly mentioned: L. P. Act, 1925, s. 79; 1 Wolst. & Cherry, 11th ed., 261–65.

(*z*) *Crusoe* v. *Bugby* (1771), 2 W. Bl. 766; 3 Wils. 234; *Grove* v. *Portal* [1902], 1 Ch. 727; 71 L. J. Ch. 299.

Assignment by one joint tenant to the other.

but a covenant "not to let, set or demise for all or any part of the term" has been held to prohibit an assignment.(*a*) An assignment by one of two joint tenants to the other is a breach of such a covenant,(*b*) and a sub-demise by way of mortgage is a breach of a covenant against underletting: *Serjeant* v. *Nash* [1903], 2 K. B. 304; 72 L. J. K. B. 630.

Assignment of part; construction of licences.

A covenant not expressly applying to "any part" of the premises is not broken by an assignment of part: *Grove* v. *Portal* [1902], 1 Ch. 727, but consent to a sub-letting or assignment of part of the premises does not apply to the rest.(*c*)

Sale by mortgagee.

Where a licence to assign is required on a sale by a mortgagee, it must not be unreasonably refused: L. P. Act, 1925, s. 89 (1).

Covenant not to assign, &c., cannot be insisted on under an open contract.

A covenant not to assign without consent, though common, is not a usual and proper one in the sense that it can be insisted on under an open contract.(*d*) Its legitimate object is to secure a responsible tenant, and it is generally reasonable to insist on some qualifying words being added, confining its operation to that end.

Is sometimes qualified.

Sometimes this is done by adding "such consent not to be unreasonably withheld," or "such consent not to be withheld if the proposed assignee is a responsible and respectable person."(*e*)

Assignment, &c., without licence.

Under a covenant thus qualified, if the lessor refuses his consent improperly, the lessee may assign without it. If the lessee receives no answer to his request within a reasonable time consent may be implied, if, in fact, to refuse consent would be unreasonable; if consent is withheld, upon other reasonable grounds, the fact that no objection is taken to the person of the proposed assign or underlessee will not prevent a breach of covenant.(*f*) But if the lessee assigns or sub-lets without asking

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(*a*) *Greenaway* v. *Adams* (1806), 12 Ves. 395; see *Re Doyle* (1899), 1 Ir. R. 113.

(*b*) *Varley* v. *Coppard* (1872), L. R. 7 C. P. 505; *Langton* v. *Henson* (1905), 92 L. T. 805, but see *Bristol Corpn.* v. *Westcott* (1879), 12 Ch. D. 461.

(*c*) *Terrell* v. *Chatterton* [1922], 2 Ch. 647; 91 L. J. Ch. 816; as to the effect of licences: L. P. Act, 1925, s. 143; and as to waiver: *ib.*, s. 148.

(*d*) *Re Lander and Bagley* [1892], 3 Ch. 41; 61 L. J. Ch. 707; *De Soysa* v. *De Pless Pol* [1912], A. C. 194, 199.

(*e*) *Lewis & Allenby* v. *Pegge* [1914], 1 Ch. 782; 83 L. J. Ch. 387; *Goldstein* v. *Sanders* [1915], 1 Ch. 549; 84 L. J. Ch. 386. A limited company is capable of being such a person: *Willmott* v. *London, &c., Ltd.* [1910], 2 Ch. 525.

(*f*) *Treloar* v. *Bigge* (1874), L. R. 9 Ex. 151; 43 L. J. Ex. 95; *Sear* v. *House Property, &c., Socy.* (1880), 16 Ch. D. 387; 50 L. J. Ch. 77; *Goodwin* v. *Saturley* (1900), 16 T. L. R. 437; and see *Andrew* v. *Bridgman* [1908], 1 K. B. 596; 77 L. J. K. B. 272; *West* v. *Gwynne* [1911], 2 Ch. 1; 80 L. J. Ch. 578; but *cf.* *Shanley* v. *Ward* (1913), 29 T. L. R. 714; *Lewis & Allenby* v. *Pegge, supra*; *Ideal Film Co.* v. *Nielsen* [1921], 1 Ch. 575; 90 L. J. Ch. 429.

for the lessor's consent, there is a breach of covenant, for which the lessor may re-enter, even when the assignee was the original lessee: *McEacharn* v. *Colton* [1902], A. C. 104; 71 L. J. P. C. 20. Though the assign or sub-lessee is a person to whom the lessor could not have objected, if his consent had been asked, it is no defence that the lessee forgot the existence of the covenant.(*g*)

Power to re-enter on breach.

A power to re-enter "if the lessee shall commit any breach of the covenants on his part to be performed" extends to breach of a covenant not to assign or sub-let without the lessor's consent, the word "perform" being equivalent to "carry out the obligation undertaken," whether negative or affirmative: *Harman* v. *Ainslie* [1904], 1 K. B. 698; 73 L. J. K. B. 539.

Relief against forfeiture.

The court has power to give relief against the breach of a covenant not to assign, underlet, part with the possession or dispose of the land leased if the breach occurs after 1925: L. P. Act, 1925, s. 146 (8).

Unreasonable refusal.

Where a lessor refused his consent to an assignment because he desired to get possession of the premises, the consent was unreasonably withheld.(*h*) The same applies where the lessor insists on a restrictive covenant being entered into.(*i*)

If a lessor attaches to his licence a condition which in the opinion of the court is unreasonable, the court will, in an action brought by the lessee, make a declaratory order under the R. S. C., O. 54A, r. 1, to that effect, and that the lessee may assign without further consent;(*j*) it will also give him his costs: *West* v. *Gwynne* [1911], 2 Ch. 1; 80 L. J. Ch. 578.

Statutory provision as to fine for consenting.

The L. P. Act, 1925, s. 144, provides that in all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession or disposing of the land or property leased without licence or consent, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence

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(*g*) *Barrow* v. *Isaacs* [1891], 1 Q. B. 417; 60 L. J. Q. B. 179; *Eastern Tel. Co.* v. *Dent* [1899], 1 Q. B. 835; 68 L. J. Q. B. 564.

(*h*) *Bates* v. *Donaldson* [1896], 2 Q. B. 241; 65 L. J. Q. B. 578; *Re Winfrey and Chatterton* [1921], 2 Ch. 7; 90 L. J. Ch. 417.

(*i*) *Premier Rinks* v. *Amalgamated, &c., Ltd.* (1912), 56 Sol. J. 536; see also *Mills* v. *Cannon Brewery* [1920], 2 Ch. 38; 89 L. J. Ch. 354; *Ideal Film Co.* v. *Nielsen* [1921], 1 Ch. 575, for other unreasonable grounds for refusal.

(*j*) *Young* v. *Ashley, &c.* [1903], 2 Ch. 112; 72 L. J. Ch. 520; *Evans* v. *Levy* [1910], 1 Ch. 452; 79 L. J. Ch. 383; and see *Re Spark* [1905], 1 Ch. 456; 74 L. J. Ch. 318.

or consent, but that such proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent. This section replaces Conv. Act, 1892, s. 3, which applied to leases granted before as well as after 1892 : *West* v. *Gwynne*, *supra*.

Extent of L. P. Act, 1925, Pt. V.

The L. P. Act, 1925, Pt. V, except where otherwise expressly provided, applies to leases created before or after the Act, and "lease" includes an underlease or other tenancy : *ib.*, s. 154. That part of the Act relates to leases and tenancies and to some extent applies to fee farm grants.

Payment of fine not illegal.

Section 144 does not make illegal the payment and acceptance of a fine for the lessor's consent to the assignment of a lease which contains a covenant against assignment without consent.(*k*) As between the parties to a lease, a lessee would be entitled to disregard the absence of a licence to assign, if the lessor refused to grant one unless and except upon the condition of a covenant for the payment of rent during the term : *ib.* ; *semble*, a stipulation that the proposed assignee shall covenant to pay the rent and perform the covenants of the lease is not, however, in the nature of a fine within the section : *Waite* v. *Jennings* [1906], 2 K. B. 11 ; 75 L. J. K. B. 542.

What is a demand of a fine, &c.

The demand of an increased rent as a condition for consenting to an assignment is a demand of a "fine or sum of money in the nature of a fine," (*l*) but the demand of a deposit as security for the performance of certain building covenants is not, *e.g.*, where a lessor made it a condition of his consenting to an assignment that the lessee should deposit a sum of money with him as a security for the performance of certain obligations, such deposit was not payment of a fine or sum of money within the meaning of the section: *Re Cosh* [1897], 1 Ch. 9; 66 L. J. Ch. 28.

Covenant runs with the land.

A covenant, made before 1926, not to assign without consent, had to be so worded as to make it clear that the personal representatives and assigns of the lessee were intended to be bound by it ;(*m*) though, *semble*, without express mention of heirs and assigns, such a covenant ran with the land unless a contrary

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(*k*) *Andrew* v. *Bridgman* [1908], 1 K. B. 596 ; 77 L. J. K. B. 272 ; *West* v. *Gwynne, supra*.

(*l*) *Jenkins* v. *Price* [1907], 2 Ch. 229 ; 76 L. J. Ch. 507 ; subsequently reversed on another point [1908], 1 Ch. 10 ; 77 L. J. Ch. 41.

(*m*) *Williams* v. *Earle* (1868), L. R. 3 Q. B. 739 ; 37 L. J. Q. B. 231 ; *Horsey Estate, Ltd.* v. *Steiger* [1899], 2 Q. B. 79 ; 68 L. J. Q. B. 743. As to the express mention of "assigns" see L. R. 4 Q. B. 637, note.

intention was expressed.(*n*) Where the covenant is entered into after 1925 the successors in title, &c., will be bound without being named: L. P. Act, 1925, s. 79. A sub-tenant is not an "assign" of a lessee who, in breach of covenant, sub-let to him; he is not liable, on the original covenant, if he sub-lets again: *Mackusick* v. *Carmichael* [1917], 2 K. B. 581; 87 L. J. K. B. 65.

Position of sub-tenant.

Measure of damages on breach.

As regards the measure of damages in an action for breach of the covenant, where the lease is assigned without consent to an insolvent person, the measure of damages is such a sum of money as will put the plaintiff in the same position as if he had still the defendant's liability instead of the liability of one of inferior pecuniary means for past and future breaches.(*o*) Where premises were sub-let for a turpentine distillery the sub-lessor was held liable for the loss occasioned by the burning down of the building, that loss being, in the opinion of the judge, having regard to the particular circumstances of the case, the natural result of the breach of covenant: *Lepla* v. *Rogers* [1893], 1 Q. B. 31.

Specific performance against representatives of lessee.

A contract by a lessee to accept a renewal of a lease will be enforced against his representatives, but not so as to impose any personal liability on them.(*p*)

Lessor's covenant (expressed or implied) for quiet enjoyment.

Implied covenant for quiet enjoyment.

Whether, in a demise of land, a covenant or agreement by the lessor for quiet enjoyment by the lessee against the lessor and persons claiming under him can only be implied from the use of some particular word, such as "demise," or whether it will be implied from the mere relation of landlord and tenant, is still unsettled.(*q*)

Such a covenant is implied by the use of the word "let."(*r*)

Ceases with lessor's estate.

An implied covenant for quiet enjoyment ceases with the lessor's estate. Hence, if a tenant for life before 1926 (he would, after 1925, have the settled land vested in him as trustee) granted

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(*n*) *Goldstein* v. *Sanders* [1915], 1 Ch. 549; 84 L. J. Ch. 386; *Re Stephenson and Co.* [1915], 1 Ch. 802; 84 L. J. Ch. 563.

(*o*) *Williams* v. *Earle, supra*; *Langton* v. *Henson* (1905), 92 L. T. 805.

(*p*) *Stephens* v. *Hotham* (1855), 1 K. & J. 571; 24 L. J. Ch. 665; as to restrictions on contracts for renewal: L. P. Act, 1922, 15th Sch., *passim*.

(*q*) Compare *Budd-Scott* v. *Daniel* [1902], 2 K. B. 351; 71 L. J. K. B. 706 (dissenting from the *dicta* of Kay, L.J., in *Baynes* v. *Lloyd* [1895], 2 Q. B. 610; 64 L. J. Q. B. 787), with *Jones* v. *Lavington* [1903], 1 K. B. 253; 72 L. J. K. B. 98.

(*r*) *Markham* v. *Paget* [1908], 1 Ch. 697; 77 L. J. Ch. 451, in which the authorities on "implied contract for quiet enjoyment" are reviewed.

a lease for years, the implied covenant ceased on his death; if a lessee for years sub-lets for a longer term, the covenant ceases on the determination of the original term.(s)

Covenants may be enforced before entry.

All persons to whom a lease has been validly granted, may maintain an action on any covenants, expressed or implied, whether or not they have entered on the demised premises: L. P. Act, 1925, s. 149; *semble*, this section overrules *Wallis* v. *Hands* [1893], 2 Ch. 75, on this point.

Express covenant excludes implied covenant.

An express covenant by the lessor for quiet enjoyment by the lessee without any interruption from the lessor or any person lawfully claiming under him excludes the implied covenant,(t) and should always be inserted in a lease, see L. P. Act, 1925, s. 8 (1).

Applies to interference with title and with enjoyment.

Instances of breach.

Damage by flooding.

An express covenant in the usual form applies not only to an interference with the covenantee's title, but also to an interference with his enjoyment of the property demised. Thus, such a covenant is broken where damage is caused to the demised land by the lawful exercise of a right to drain through it, conferred by the same lessor on the tenant of the adjoining land.(u)

Interference with support.

It is doubtful whether a nuisance by noise is a breach of a covenant for quiet enjoyment; a temporary inconvenience certainly is not. Reduction of support to a building is not a breach of such a covenant unless it can be proved that the full support is required for the stability of the building: *Phelps* v. *City of London Corpn.* [1916], 2 Ch. 255; 85 L. J. Ch. 535.

Covenant does not enlarge lessee's rights, but only confers additional remedy.

Rights to light.

A covenant for quiet enjoyment in the usual form does not enlarge the rights of the lessee, but confers on him an additional remedy in case those rights are invaded. Thus, if there is no reservation to the lessor of rights in respect of his adjoining property, the lessor is precluded from building on land belonging to him at the date of the lease so as to interfere with the lessee's lights, for to do so would be a breach of the covenant. But it would be no breach so to build on land subsequently acquired by him.(v) Where rights over adjoining property are reserved the lessor may use such property for any purpose allowed by law, not injuriously affecting the property demised. There is no implied obligation for him to keep and use it in the condition in which it was at the date of the lease.(*w*) A lessor is not liable in respect of a nuisance committed by another of his tenants, even though he knows of it and takes no steps to prevent it, unless he actively participates therein. A lessor cannot be called upon by one of his tenants to use for the benefit of that tenant all the powers he may have under agreements with other persons: *Malzy* v. *Eichholz* [1916], 2 K. B. 308; 85 L. J. K. B. 1132.

(s) *Adams* v. *Gibney* (1830), 6 Bing. 656; 8 L. J. (O. S.) C. P. 242; *Penfold* v. *Abbott* (1862), 32 L. J. Q. B. 67; *Baynes* v. *Lloyd* [1895], 2 Q. B. 610; 64 L. J. Q. B. 787; *Jones* v. *Lavington* [1903], 1 K. B. 253; 72 L. J. K. B. 98.

(t) *Dennett* v. *Atherton* (1872), L. R. 7 Q. B. 316; 41 L. J. Q. B. 165.

(u) *Sanderson* v. *Berwick* (1884), 13 Q. B. D. 547; 53 L. J. Q. B. 559; see *Manchester, Sheffield, &c., Ry.* v. *Anderson* [1898], 2 Ch. 394; 67 L. J. Ch. 568; *Williams* v. *Gabriel* [1906], 1 K. B. 155; 75 L. J. K. B. 149.

(v) *Booth* v. *Alcock* (1873), L. R. 8 Ch. 663; 42 L. J. Ch. 557; *Davis* v. *Town, &c., Corpn.* [1903], 1 Ch. 797; 72 L. J. Ch. 389; see *Jenkins* v. *Jackson*.

Notice to sub-tenant to pay rent to lessor, a breach.

It is a breach of a covenant for quiet enjoyment for a lessor to give notice to a sub-tenant of the lessee to pay the rent to him, unless the circumstances are such that the notice might be treated as a mere idle threat.(*x*)

Persons claiming under lessor.

Persons taking an estate in remainder under a settlement made by the lessor were deemed to claim under him within the meaning of the usual covenant.(*y*) After 1925 the tenant for life will be the estate owner, the term will be derived out of his legal estate.

The words in the covenant "claiming under him" have been held to mean "claiming under the lessor the right to do the acts which caused the interruption."(*z*)

SECT. V.—*The condition of re-entry, and the relief provided by statute against a forfeiture thereunder.*

Proviso for re-entry.

The lessee's covenants are usually followed by a proviso or condition enabling the lessor to re-enter in case the rent remains unpaid for a certain time, or in case of a breach of the lessee's covenants; but the latter condition could not, in the absence of express stipulation, be insisted on: *Re Lander and Bagley* [1892], 3 Ch. 41; 61 L. J. Ch. 707.

Forcible entry.

Forcible re-entry is not illegal under 5 Ric. 2, stat. 1, ch. 7, provided no more force is used than is actually required.(*a*)

(1889), 40 Ch. D. 71; 58 L. J. Ch. 124, where it was held that the permission of a nuisance on the adjoining property was not a breach; see also *Jaeger* v. *Mansions, Ltd.* (1902), 19 T. L. R. 114, 145; *Harmer* v. *Jumbil (N) Tin Areas Ltd.* [1921], 1 Ch. 200; 90 L. J. Ch. 140.

(*w*) *Phelps* v. *City of London Corpn.* [1916], 2 Ch. 255; 85 L. J. Ch. 535.

(*x*) *Edge* v. *Boileau* (1885), 16 Q. B. D. 117; 55 L. J. Q. B. 90.

(*y*) *Hurd* v. *Fletcher* (1778), 1 Doug. 43; *Evans* v. *Vaughan* (1825), 4 B. & C. 261; 3 L. J. (O. S.) K. B. 217; see also *Markham* v. *Paget* [1903], 1 Ch. 697; 77 L. J. Ch. 451.

(*z*) *Williams* v. *Gabriel* [1906], 1 K. B. 155; 75 L. J. K. B. 149; and see *Re Griffiths* (1917), W. N. 51.

(*a*) *Hemmings* v. *Stoke Poges Golf Club* [1920], 1 K. B. 720; 89 L. J. K. B. 744.

Demand of rent necessary at common law.

Before a landlord could re-enter for non-payment of rent, he was, by the common law, obliged to make an actual demand, and in making such demand a number of troublesome formalities were necessary: 1 Saund. 286 b, n. 16. By the C. L. P. Act, 1852, s. 210, the service of a writ of ejectment is substituted for an actual demand and re-entry; but a lessor could not recover under this statute without showing that a half-year's rent was due before the writ was served, that no sufficient distress could be found on the premises and that the lessor had power to re-enter: *Doe* v. *Wandlass* (1797), 7 T. R. 117. Hence, it is usual to provide in the condition for re-entry that the lessor may re-enter for non-payment of rent, whether the same shall have been legally demanded or not. Words to that effect will dispense with the necessity of making a legal demand, or of proving that no sufficient distress can be found.(*b*) If the lease or agreement expressly requires that the rent shall be demanded before a re-entry, the demand need not be accompanied by the common law formalities: *Doe* v. *Alexander* (1814), 2 M. & S. 525, but it must not be made until the expiration of the time allowed for payment.(*c*)

Service of writ of ejectment substituted for demand in certain cases.

Demand should be expressly dispensed with.

Forfeiture waived by acceptance of rent accrued since breach.

A forfeiture, whether for non-payment of rent or for breach of covenant, will be waived by an acceptance of rent which has accrued since the forfeiture, provided that the lessor at the time of such acceptance has notice of the forfeiture, because, by such acceptance, he, in effect, admits that the tenancy continues. It is equally a waiver to bring an action: *Dendy* v. *Nicholl* (1858), 4 C. B. (N. S.) 376; 27 L. J. C. P. 220; or to distrain for such rent: *Cotesworth* v. *Spokes* (1861), 10 C. B. (N. S.) 103; 30 L. J. C. P. 220; subject, however, to this exception, that, if the distress is insufficient and a half-year's rent still remains due, the lessor may bring an action for ejectment under s. 210 of the above-mentioned Act.(*d*) Waiver of forfeiture in respect of a breach of covenant to build in a special way, may imply a waiver of forfeiture in respect of a breach of covenant to repair: *Stephens* v. *Junior A. & N. Stores* [1914], 2 Ch. 516; 84 L. J. Ch. 56; *cf.* L. P. Act, 1925, s. 148.

By distress, except in cases coming within s. 210 of Act.

No waiver to accept rent

It is no waiver to accept or sue or distrain for rent which

(*b*) *Doe* v. *Masters* (1824), 2 B. & C. 490; 2 L. J. (O. S.) K. B. 117.

(*c*) *Phillips* v. *Bridge* (1873), L. R. 9 C. P. 48; 43 L. J. C. P. 13.

(*d*) *Thomas* v. *Lulham* [1895], 2 Q. B. 400; 64 L. J. Q. B. 720. Section 209 (relating to notice of ejectment) has been repealed and is replaced by L. P. Act, 1925, s. 145.

Notice of ejectment.

due before forfeiture.

accrued due before the forfeiture. The acceptance, &c., of rent after a breach of covenant has been committed is not a waiver of forfeiture in respect of a subsequent or continuing breach of the same covenant: *Penton* v. *Barnett* [1898], 1 Q. B. 276; 67 L. J. Q. B. 11.

Relief against forfeiture for non-payment of rent.

It has been long settled that the court will relieve against a forfeiture for non-payment of rent.(*e*) Under the C. L. P. Act, 1852, ss. 210, 211 and 212, a tenant (see *Moore* v. *Smee* [1907], 2 K. B. 8; 76 L. J. K. B. 658) may stay all further proceedings against him by paying the arrears of rent and costs to the landlord or into court. A lessee, against whom judgment and execution have been had in an action of ejectment for non-payment of rent, must proceed for relief within six months after execution. If he proceeds within that time, he must bring into court the arrears of rent and the amount of the taxed costs within forty days after the lessor's answer.(*f*)

Forfeiture for breaches of covenants.

Since 1882 the court has had certain powers to relieve lessees from the consequences of a breach of the covenants or conditions of the lease: L. P. Act, 1925, s. 146 (reproducing with amendments the enactments on this subject): 1 Wolst. & Cherry's Conv. Stat., 11th ed., 379–92. For the general principles on which relief will be granted, see *Rose* v. *Spicer*.(*g*)

With regard to the construction of this section it has been held that:—

Notice under s. 146 need not claim compensation.

(1) A notice may be good, though it does not claim compensation, the lessor not being bound to make such claim unless he wants it: *Lock* v. *Pearce* [1893], 2 Ch. 271; 62 L. J. Ch. 582. But the notice must give sufficient details to enable the lessee to understand what is the breach complained of,(*h*) though it is not necessary to point out all the defects in detail: *Fox* v. *Jolly* [1916], 1 A. C. 1; 84 L. J. K. B. 1927. He must be allowed a reasonable time to act before action brought: *Horsey Estate*,

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(*e*) *Wadman* v. *Calcraft* (1804), 10 Ves. 67, and see *Hare* v. *Elms* [1893], 1 Q. B. 604; 62 L. J. Q. B. 187; *Dendy* v. *Evans* [1910], 1 K. B. 263; 79 L. J. K. B. 121.

(*f*) See *Bowser* v. *Colby* (1841), 1 Hare, 109; 11 L. J. Ch. 132; *Howard* v. *Fanshawe* [1895], 2 Ch. 581; 64 L. J. Ch. 666; *Humphreys* v. *Morten* [1905], 1 Ch. 739; 74 L. J. Ch. 370; Jud. Act, 1925, s. 46.

(*g*) [1911], 2 K. B. 234; 80 L. J. K. B. 1011; reversed on facts in D. P., *sub nom. Hyman* v. *Rose* [1912], A. C. 623; 81 L. J. K. B. 1062.

(*h*) *Fletcher* v. *Nokes* [1897], 1 Ch. 271; 66 L. J. Ch. 177; *Re Serle* [1898], 1 Ch. 652; 67 L. J. Ch. 344; and see *Guillemard* v. *Silverthorne* (1908), 99 L. T. 584; *New River Co.* v. *Crumpton* [1917], 1 K. B. 762; 86 L. J. K. B. 614.

Ltd. v. *Steiger* [1899], 2 Q. B. 79; 68 L. J. Q. B. 743. The notice should indicate what the lessor requires the lessee to do.(*i*) A notice may be good, though some only of the breaches complained of have been committed.(*j*) A writ claiming possession is equivalent to a notice: *Moore* v. *Ullcoats, &c., Ltd.* [1908], 1 Ch. 575; 77 L. J. Ch. 282.

Position of underlessee.

(2) An under-lessee may not, as between himself and the original lessor, be a lessee within the meaning of sub-ss. (1) to (3).(*k*)

Underlessee might obtain relief, where head lessee would not.

(3) Under sub-s. (4) an underlessee might formerly be entitled to relief where the head lessee could not claim any—*e.g.*, where the head lease was forfeited by the head lessee becoming bankrupt: *Highgate School* v. *Sewell* [1894], 2 Q. B. 906; 63 L. J. Q. B. 820; or by the head lessee underletting without licence: *Imray* v. *Oakshette* [1897], 2 Q. B. 218; 66 L. J. Q. B. 544. The fact that the underlessee had broken a similar covenant in the underlease did not disentitle him to the benefit of relief: *Hurd* v. *Whaley* [1918], 1 K. B. 448; 88 L. J. K. B. 260.

Non-payment of rent.

(4) Relief may be given under sub-s. (4) against forfeiture of the head lease for non-payment of rent: *Gray* v. *Bonsall* [1904], 1 K. B. 601; 73 L. J. K. B. 515.

Higher rent may be reserved on new lease.

(5) Under sub-s. (4) the court has an absolute discretion as to the rent and covenants to be inserted in the new lease, and may fix a higher rent than the original one if, under the circumstances, it would be fair to do so: *Ewart* v. *Fryer* [1901], 1 Ch. 499; 70 L. J. Ch. 138.

Notice not affected by claim to rent if breach continues.

(6) Where there is a covenant to keep the premises in repair, and the landlord has given a notice under the section, which is not complied with, he may, at any time after the expiration of the notice while the state of disrepair continues, bring an action to recover possession. In that action he may claim rent which has become due between the expiration of the notice and the service of the writ. The claim to rent does not affect the right to possession in respect of non-repair after the date when the rent became due, and a new notice under the section is unnecessary: *Penton* v. *Barnett* [1898], 1 Q. B. 276; 67 L. J. Q. B. 11.

(*i*) See *Horsey Estate, Ltd.* v. *Steiger*, *supra*, at p. 91; and *cf. Piggott* v. *Middlesex County Council* [1909], 1 Ch. 134; 77 L. J. Ch. 813.

Form of notice.

(*j*) *Pannell* v. *City of London Brewery* [1900], 1 Ch. 496; 69 L. J. Ch. 244; see also as to form of notice where there are covenants to build and to keep in repair, *Jacob* v. *Down* [1900], 2 Ch. 156; 69 L. J. Ch. 493.

(*k*) *Burt* v. *Gray* [1891], 2 Q. B. 98; 60 L. J. Q. B. 664; *Nind* v. *N. C. Building Socy.* [1894], 2 Q. B. 226; 63 L. J. Q. B. 636.

(7) A condition of re-entry, if the lessees, being a company, should enter into liquidation, compulsory or voluntary, applies to a solvent company going into voluntary liquidation for the purpose of reconstruction, and is a condition for forfeiture on bankruptcy.(*l*)

Forfeiture on company going into liquidation.

(8) If the company is dissolved the lease determines automatically.(*m*)

Dissolution works a cesser.

(9) Where an underlease is granted to an unregistered society the trustees as such cannot sue: *Jarrott* v. *Ackerley*, 113 L. T. 371; 85 L. J. Ch. 135.

Unregistered society.

(10) The effect of an order for relief under the section is to restore the lease as if it had never become forfeited; an underlease granted by the original lessee will also remain in existence: *Dendy* v. *Evans* [1910], 1 K. B. 263; 79 L. J. K. B. 121.

Effect of order for relief.

(11) Where underlessees are guilty of negligence the court will not give relief: *Matthews* v. *Smallwood* [1910], 1 Ch. 777; 79 L. J. Ch. 322.

Negligent under-lessees.

(12) A condition of re-entry in case the lessee executes an assignment for the benefit of his creditors could be relieved against even before the section was amended: *Gentle* v. *Faulkner* [1900], 2 Q. B. 267; 69 L. J. Q. B. 777.

Assignment by lessee for benefit of creditors.

A condition of re-entry in case the lessee, &c., shall become bankrupt, does not take effect on the bankruptcy of the lessee after he has assigned the lease: *Smith* v. *Gronow* [1891], 2 Q. B. 394; 60 L. J. Q. B. 776.

Bankruptcy of lessee after assignment.

SECT. VI.—*The effect of alienation by the lessor or lessee as regards the rent and the covenants and conditions of the lease.*

A rent reserved on a lease is by common law incident to the reversion and passes with it on every devolution or alienation. And if the reversion of part of the land comprised in the lease is disposed of, the rent is apportionable at common law: Co. Litt. 148a.

Rent follows reversion, and is apportion-able on a partial alienation.

A payment of rent by a tenant to a mortgagor, or judgment debtor, in advance of the proper date of payment, is not a good

Payment of rent in advance.

(*l*) *Horsey Estate* v. *Steiger* [1899], 2 Q. B. 79; 68 L. J. Q. B. 743; *Fryer* v. *Ewart* [1902], A. C. 187; 71 L. J. Ch. 433; see also *Re Castle* (1906), 94 L. T. 639; L. P. Act, 1925, ss. 146 (9), (10), 205 (1) (i).

(*m*) *Hastings Corpn.* v. *Letton* [1908], 1 K. B. 378; 77 L. J. K. B. 149; *Re Woking U. D. C.* (*Basingstoke Canal*) *Act*, 1911 [1914], 1 Ch. 300; 83 L. J. Ch. 201; *cf. Re Albert Road* [1916], 1 Ch. 289; 85 L. J. Ch. 187; *Re Queenstown D. D. Shipbuilding Co.* [1918], 1 I. R. 356. As to dissolution, see also L. P. Act, 1925, s. 181, enabling the court to re-create the term to avoid injustice *e.g.*, where the corporation held the original term as a trustee.

Power to re-create term.

payment as between the tenant and the mortgagee, or judgment creditor, unless at the date when the rent was paid the mortgage (if registrable) or judgment debt was not registered under the L. C. Act, 1925. There is no difference in this respect between the case of a legal and that of an equitable charge: *Ashburton* v. *Nocton* [1915], 1 Ch. 274; 84 L. J. Ch. 193.

Attornment of tenant to grantee of reversion unnecessary.

It was formerly necessary to the validity of the grant of a reversion that the tenant should attorn to the grantee, *i.e.*, consent to accept him as his landlord. The necessity for attornment was done away with by the statute 4 & 5 Anne, c. 3, ss. 9 and 10 (repealed),(*n*) now in substance reproduced by L. P. Act, 1925, s. 151.

Benefit of and liability under covenants, &c., made to run by statute.

The benefit of and obligation under the covenants and conditions in a lease did not, however, pass at common law to a grantee of the reversion. This has been remedied by statute, the whole subject is now dealt with by L. P. Act, 1925, ss. 139 (effect of extinguishment of reversion, reproducing R. P. Act, 1845, s. 9); 140 (amended as to sub-s. 2 by L. P. (Amend.) Act, 1926, s. 2) (relating to apportionment of conditions on severance, reproducing L. P. Act, 1859, s. 3, and Conv. Act, 1881, s. 12, with amendments); 141 (rent and benefit of lessees' covenants to run with the reversion, reproducing 32 Hen. 8, c. 34, so far as it related to lessees' covenants, &c., and Conv. Act, 1881, s. 10, and Conv. Act, 1911, s. 2, with slight amendments), and 142 (obligation of lessor's covenant to run with reversion, reproducing 32 Hen. 8, c. 34, s. 2, and Conv. Act, 1881, s. 11). The main point to bear in mind is that the Act of 1925, Pt. V, unless otherwise stated, applies to leases and tenancies made before or after the Act.(*o*)

Licences and waivers of conditions.

It was formerly a rule of law that if a condition was once dispensed with it was gone for ever: *Dumpor's Case* (1603), 4 Co. Rep. 119b; but this doctrine was abolished by the L. P. (Amend.) Act, 1859, ss. 1, 2, and the L. P. Act, 1860, s. 6, now replaced by the L. P. Act, 1925, ss. 143 and 148. Under s. 143, a licence granted to a lessee to do any act extends only to the act specified, and does not affect the right of the lessor to forfeit the lease on the repetition of the act without permission. Where a licence is given to assign or sublet part of the land demised,

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(*n*) Woodfall, 21st ed., 328; *Horn* v. *Beard* [1912], 3 K. B. 181; 81 L. J. K. B. 935; 1 Wolst. & Cherry, 11th ed., 398–99.

(*o*) On these sections, see 1 Wolst. & Cherry, 11th ed., 369–76; for the old law, see Vol. II of 21st ed. of this work, pp. 32–4.

the lessor's rights over the land not included in the licence are not affected, and every right of entry or forfeiture on breach of any condition in the lease is exercisable over that land to the same extent as before. Under s. 148, the waiver of a particular breach of covenant only extends to the breach to which it relates and does not operate as a general waiver of such covenant or condition : 1 Wolst. & Cherry, 11th ed., 392.

Mortgagor in possession may sue for rent and re-enter for breach of covenants.

Under L. P. Act, 1925, s. 98 (reproducing Jud. Act, 1873, s. 25 (5)), a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or for the recovery of the rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. It does not prejudice the power of the mortgagor, independently of the section to take proceedings : *ib.*, sub-s. (2) ; for after 1925 the mortgagor will have a legal estate, not merely a right of redemption.

This section does not entitle a mortgagor in possession to re-enter for breach of covenant,(*p*) but he can do so under L. P. Act, 1925, s. 141 (2), which enables him to sue on the covenants,(*q*) independently of any legal estate he may have in the land.

Effect of destruction of mesne reversion.

As the right to the rent and to sue on the covenants follows the reversion, it was formerly important, where a lease was made by a person who was himself only a termor, or had otherwise a limited interest, that the term or other interest constituting his reversion should not be merged or surrendered. For example, if lands were held by A. for life or for years, with remainder to B., and A. made a lease and afterwards surrendered his estate to B., or took a conveyance from B., which had the effect of merging his (A.'s) estate, the consequence was, that, the immediate reversion on the lease being gone, the rent and the benefit of the covenants were gone also. This was remedied by

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(*p*) *Matthews* v. *Usher* [1900], 2 Q. B. 535 ; 69 L. J. Q. B. 856 ; see also *Molyneux* v. *Richard* [1906], 1 Ch. 34, 43 ; 75 L. J. Ch. 39.

Right to sue after conveyance for condition previously broken.

(*q*) *Turner* v. *Walsh* [1909], 2 K. B. 484 ; 78 L. J. K. B. 753 ; and see Woodfall, 21st ed., 314. As to the right for a purchaser to sue though his conveyance is taken after a right of entry has become enforceable : L. P. Act, 1925, s. 141 (3) ; 1 Wolst. & Cherry, 11th ed., 374.

R. P. Act, 1845, s. 9, now reproduced by L. P. Act, 1925, s. 139: see *Plummer* v. *David* [1920], 1 K. B. 326; 89 L. J. K. B. 1021.

Original lessee remains liable to covenants after assignment and may be sued by grantee of reversion.

A lessee who has entered into covenants or agreements with his lessor remains liable to those covenants after he has assigned the lease to another, and the right to sue the original lessee in such a case passes to a grantee of the reversion by virtue of L. P. Act, 1925, s. 141.(*r*) It no longer appears to be of any importance whether or not the lease was created by deed: *ib.*, s. 154, extending the meaning of "a lease" to an underlease or other tenancy.

Exception.

Where a perpetually renewable lease is converted into a long term by L. P. Act, 1922, 15th Sch., the person in whom the term is vested is treated as an assignee even though he may have been the original lessee: *ib.*, para 11.

Liability of assignee who does not execute, &c.

An assignee of a term of years who does not execute the assignment or take possession is not liable to the lessor for rent, there being no privity of estate or of contract.(*s*) He could disclaim.

Sect. VII.—*By what modes, other than by forfeiture, a tenancy may be determined, and the rights of the parties at the determination thereof.*

Notice to quit.

Lease for term determines by effluxion of time.

A lease for a term certain determines at the expiration of the term, and no notice to quit is necessary.

Notice to quit necessary to determine tenancy from year to year.

A tenancy from year to year (except in cases within the Agr. H. Act, 1923) continues until it is put an end to by a half-year's notice to quit from one of the parties. Such notice must expire at the period of the year at which the tenancy commenced. A notice to quit must be clear and unambiguous: *May* v. *Borup* [1915], 1 K. B. 830; 84 L. J. K. B. 823. If a tenancy from year to year has arisen from the tenant having held over on the expiration of his lease or original tenancy, the general rule is that the notice must expire at the period of the year at which the term commenced.(*t*) If the tenant dies during the tenancy, his personal representative has the same interest in the land as

Representatives of tenant entitled to notice to quit.

(*r*) Assignment includes Act of Parliament vesting reversion in another person: *Sunderland Orphan Asylum* v. *Wear Commrs.* [1912], 1 Ch. 191; 81 L. J. Ch. 269.

(*s*) *Purchase* v. *Lichfield Brewery Co.* [1915], 1 K. B. 184; 84 L. J. K. B. 742.

(*t*) For cases where the term is indefinite, but determinable on notice, see *Soames* v. *Nicholson* [1902], 1 K. B. 157; 71 L. J. K. B. 24; *Dixon* v. *Bradford*, the deceased had, and the same notice to quit is necessary : *Doe* v. *Porter* (1789), 3 T. R. 13.

Determination of a yearly tenancy before the end of the first year.

A yearly tenancy, whether created by grant or implication, may not be determined (save by surrender) before the end of the first year, even though the lease stipulates that it shall be so determinable upon notice given by either party : *Mayo* v. *Joyce* [1920], 1 K. B. 824 ; 89 L. J. K. B. 561. After the first year it may be determined in any way agreed between the parties, which is not repugnant to such a tenancy.(*u*)

Any stipulation or provision in the lease which is repugnant to the nature of the tenancy will be rejected : *Gray* v. *Spyer* (see note (*u*)).

At least a half-year's notice to quit is necessary whether the rent be reserved half-yearly or quarterly.(*v*)

Notice to quit *primâ facie* waived by acceptance or demand of rent.

An acceptance of rent becoming due after the expiration of a notice to quit is a *primâ facie* waiver of the notice, as it shows the intention of both parties to continue the tenancy ; this is so, even if the lessor, while accepting money tendered as rent, repudiates the lease : *Hartell* v. *Blacker* [1920], 2 K. B. 161 ; 89 L. J. K. B. 838 ; so, also, if the landlord distrains for or demands the rent, he *primâ facie* affirms the continuance of the tenancy ; but the presumption of waiver may be rebutted. It may be a question for the jury, and not for the court, whether, in the circumstances of the case, the notice has been waived : *Blyth* v. *Dennett* (1853), 13 C. B. 178 ; 22 L. J. C. P. 79.

Effect of withdrawal of notice to quit.

When a notice to quit is waived or withdrawn a new tenancy is created for the residue of the old term.(*w*) The new tenancy should be confirmed in writing ; if the new term exceeds three years or the rent reserved is less than a rack rent the new lease should be made by deed.

Waiver of notice to quit against a sub-tenant.

Where there is a covenant against sub-demising and the head lessee waives or withdraws a notice to quit against his underlessee, this may operate as a breach of the covenant : *Freeman* v. *Evans* [1922], 1 Ch. 36 ; 91 L. J. Ch. 195.

&c., Socy. [1904], 1 K. B. 444 ; 73 L. J. K. B. 136 ; *Lewis* v. *Baker* [1906], 2 K. B. 599 ; 75 L. J. K. B. 848 ; *Croft* v. *Blay* [1919], 2 Ch. 343 ; 88 L. J. Ch. 545.

(*u*) *Allison* v. *Scargill* [1920], 3 K. B. 443 ; 89 L. J. K. B. 1084 ; *Gray* v. *Spyer* [1921], 2 Ch. 549, but reversed on the construction of the contract : [1922], 2 Ch. 22.

(*v*) *Shirley* v. *Newman* (1795), 1 Esp. 266, see *Re Lancashire & Yorkshire Bank's Lease* [1914], 1 Ch. 522 ; 83 L. J. Ch. 577.

(*w*) *Freeman* v. *Evans* [1922], 1 Ch. 36 ; 91 L. J. Ch. 195. As to Irish law, see *per contra Inchiquin* v. *Lyons* (1887), 20 L. R. (Ir.) 474.

What notice necessary under Agr. H. Act.

Section 25 of the Agr. H. Act, 1923, provides that, notwithstanding any contrary stipulation, a notice to quit an agricultural holding will be invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, but the following notices are excluded from the operation of this section :—

(1) Any notice given by the Admiralty, War Department, or Air Council, under the provisions of any tenancy agreement where possession of the land is required for naval, military or air force purposes ; or

(2) Any notice given by a corporation carrying on a railway, dock, canal, water or other undertaking, or by a government department or local authority, in respect of land acquired or appropriated for the purposes of the undertaking and required for those purposes, other than agriculture ; or

(3) Any notice given pursuant to a provision in the tenancy agreement authorising the lessor to resume possession of the whole, or part, of the holding for some specified purpose, not being the use of the land for agriculture ;

(4) Any notice given by a tenant to a sub-tenant ; or

(5) Any notice given before the 1st of January, 1921.

Special provisions of the Agr. H. Act, 1923, as to resumption of part of a holding.

By the same Act, s. 27, where part of a holding is required for any of the purposes mentioned in that section and the notice to quit states that it was given with a view to such use—

(a) the notice is not invalid because it relates only to a part of the holding ;

(b) the provisions of the Act relating to compensation apply as if the part to which the notice relates were a separate holding ;

(c) the tenant is entitled to a reduction of rent proportionate to the size of the part of the holding to which the notice relates and in respect of any decrease in value of the rest of the holding owing to the severance, the amount of which is to be settled as in the case of compensation under the Act.

Where a notice to quit relates to part only of the holding the tenant, within twenty-eight days after the service of the notice, may inform the landlord that he accepts it as a notice to quit the entire holding at the expiration of the current year of tenancy.

Where such a notice is given pursuant to an express power the tenant may not accept it as a notice to quit the entire holding but may obtain compensation as if the service of notice had not been made pursuant to the terms of the lease.

In assessing such compensation and reduction of rent any benefit or relief allowed under the terms of the lease in respect of any land thus resumed by the lessor will be taken into account.

Restrictions on notices to quit served for the purpose of a sale.

Where the lessor of an agricultural holding, held from year to year, gives to the tenant notice to quit, and before the expiration of such notice contracts to sell the holding, the notice to quit is invalidated unless the tenant has, after the 19th of August, 1919, and before such contract of sale, by writing, agreed that the notice shall be valid : Agr. H. Act, 1923, s. 26.

Weekly tenancy.

A reasonable notice is required to determine a weekly tenancy. The safe plan is to give a week's notice ending with the current week : *Bowen* v. *Anderson* [1894], 1 Q. B. 164 ; but it is possible that a less notice might be held to be sufficient.

Tenancy at will, how determined.

A tenancy at will may be determined at any time by the tenant delivering up possession, or by the landlord demanding such possession, and no notice to quit is necessary.(*x*)

Tenancy on sufferance, how determined.

A tenant on sufferance is a mere trespasser, and the landlord may at any time enter and put an end to the tenancy without making any previous demand.

Notice to quit part of holding, under L. P. Act, 1925, s. 140 (2), as amended.

The effect of a notice to quit part of a holding under L. P. Act, 1925, s. 140 (2), as amended by L. P. (Amend.) Act, 1926, s. 2, has been previously explained: p. 936, *supra.*

Surrender by deed or by operation of law.

Surrender.

Express surrender must be by deed.

A lease or tenancy may be determined by an express surrender, or by a surrender by act and operation of law. An express surrender requires a deed, unless, *semble*, the estate surrendered is one that can be created by parol : L. P. Act, 1925, s. 52 (2) (c); in which case the surrender may, query, be by writing.(*y*)

Surrender by operation of law.

A surrender by act and operation of law arises :—

(1) Where the lessee gives up, and the lessor resumes possession

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Length of notice.

(*x*) *Right* v. *Beard* (1811), 13 East, 210. For a review of authorities as to length of notice in case of tenancies of less than a year, see *Simmons* v. *Crossley* [1922], 2 K. B. 95 ; 91 L. J. K. B. 643 ; in the case of monthly tenancies, see *Savory* v. *Bayley*, 38 T. L. R. 619.

(*y*) L. P. Act, 1925, ss. 52 (2), 53 ; *Fenner* v. *Blake* [1900], 1 Q. B. 426 ; 69 L. J. Q. B. 257.

in pursuance of an agreement between the parties that the lease shall come to an end (*z*); or

(2) Where a lessee accepts a new lease commencing immediately or which is otherwise inconsistent with the continuance of the first lease, even though the second lease may be of shorter duration than the first: *Hughes* v. *Robotham* (1593), Cro. Eliz. 302; or

(3) Where a new lease is made to a third party, with the assent of the original tenant, who gives up possession.(*a*)

Consent of original tenant to new lease may be implied.

The consent of the original tenant may be implied from the circumstances. Thus, where a bishop's lease had been granted to A., and at the accustomed period a new lease was granted to B., the consent of A. was presumed from the fact that at the time of the renewal B. was in possession of the property and also of the old lease, and that the old lease was, in accordance with the usage at the bishop's office, given up by him to be cancelled.(*b*) But there can be no implied surrender by the original lessee unless he gives up actual possession. If, therefore, A., a lessee, grants an underlease to B., who takes possession, and a new lease is afterwards granted by the superior lessor to C., no evidence of A.'s consent to the new lease will supply the place of a surrender by deed, so as to enable C. to sue B. on the covenants in the underlease.(*c*)

Surrender not implied; when.

Lease may be surrendered without underlease.(*d*)

The L. P. Act, 1925, s. 150, enables a lease to be surrendered, with a view to the grant of a new lease, without the surrender of any derivative lease, and gives to the lessee under the new lease and to the underlessees the same rights and remedies as if the old lease had been still in existence.

Surrender to mortgagor.

Though a mortgagor in possession can grant leases under L. P. Act, 1925, s. 99, he cannot properly accept surrenders without the concurrence of the mortgagee: *Robbins* v. *Whyte* [1906], 1 K. B. 125; 75 L. J. K. B. 38, unless the mortgage deed is executed after 1911, or the provisions of L. P. Act, 1925, s. 100, are made applicable to a mortgage dated before 1912; under that section the surrender can only be accepted with a view to the

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(*z*) *Phené* v. *Popplewell* (1862), 12 C. B. (N. S.) 334; 31 L. J. C. P 235; and see *Oastler* v. *Henderson* (1877), 2 Q. B. D. 575; 46 L. J. Q. B. 607.

(*a*) *Thomas* v. *Cook* (1818), 2 B. & Ald. 119; *Nicholls* v. *Atherstone* (1847), 10 Q. B. 944; 16 L. J. Q. B. 371; *Macdonnell* v. *Pope* (1852), 9 Hare, 705; see also *Wallis* v. *Hands* [1893] 2 Ch. 75; 62 L. J. Ch. 586.

(*b*) *Walker* v. *Richardson* (1837), 2 M. & W. 882; 6 L. J. Ex. 229; *Davison* v. *Gent* (1857), 1 H. & N. 744; 26 L. J. Ex. 122.

(*c*) *Lyon* v. *Reed* (1844), 13 M. & W. 285; 13 L. J. Ex. 377; *Wallis* v. *Hands*, *supra*.

(*d*) See *Plummer* v. *David* [1920], 1 K. B. 326; 89 L. J. K. B. 1021.

grant of a new authorised lease which must take effect in possession within one month from the date of the surrender, and otherwise comply with that section. The powers of leasing and accepting surrenders are, by those sections, given to the mortgagor or mortgagee in possession. After 1925 the mortgagor will have a legal estate, hence a surrender accepted by him, otherwise than under the statutory power, may be valid save as against the mortgagees and the persons deriving title under them.

Merger.

Where the term and the reversion expectant thereon become vested in the same person, at the same time, in the same right, the term merges in the reversion and becomes extinguished.(*e*)

Disclaimer under the Bankruptcy Act.

Bankruptcy Act, 1914.

Under the Bkcy. Act, 1914, leaseholds forming part of a bankrupt's estate vest in the trustee in bankruptcy when appointed, who can disclaim them under s. 54 by writing, it need not be under seal: L. P. Act, 1925, s. 52. Pending the appointment of a trustee, the official receiver can disclaim (Bkcy. Act, 1914, s. 54 (7)), provided he does so within twelve months after he has begun to act as trustee or has become aware of the existence of the term.

Bankruptcy Rules, 1915.

The Bkcy. Rules, 1915 (r. 276), define the cases where a lease may be disclaimed without the leave of the court. In cases not authorised by the rule an application to the court is necessary: s. 54 (3).

The effect of the statutory provisions is as follows:—

When bankrupt is original lessee, all remedies of the lessor remain in force until disclaimer.

(1) When the bankrupt is the original lessee, the lessor will be entitled to distrain, or to prove in the bankruptcy for arrears of rent, and also to prove for breaches of covenant up to the date of the disclaimer, subject, as to arrears of rent, to the operation of s. 35.

Where bankrupt is an assign, remedies of lessor against original lessee remain in force after disclaimer.

(2) Where the bankrupt is an assign of the original lessee, the disclaimer will not deprive the lessor of any of his remedies against the original lessee, who will be entitled to prove in the bankruptcy for any money which he may be compelled to pay and which the bankrupt ought to have paid. He may also apply to the court for an order vesting the bankrupt's interest in him.

Mortgagee by sub-demise or

(3) Where the bankrupt has mortgaged by sub-demise, or by charge by way of legal mortgage operating, in effect, as if it were

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(*e*) *Re Fletcher* [1917], 1 Ch. 339; 86 L. J. Ch. 317; also Foà, 6th ed., 707 to 710; L. P. Act, 1925, s. 185.

underlessee may have a vesting order.

by sub-demise, though no term is actually created, or the bankrupt has granted an underlease, the court will give the mortgagee or underlessee the option of taking a vesting order of the bankrupt's interest.(*f*) If he consents to take it he will be liable for the rent and lessee's covenants contained in the original lease as from the date of the petition in bankruptcy, and will be freed from the rents and covenants (if any) contained in the underlease. If, on the other hand, he declines to take a vesting order, his mortgage or underlease will cease altogether.

On disclaimer liability of surety for rent ceases.

Where the original lessee becomes bankrupt and there has been no assignment or dealing with the lease, the disclaimer puts an end to the lease altogether, and if the rent is guaranteed by a surety, his liability for future rent ceases: *Stacey* v. *Hill* [1901], 1 K. B. 660; 70 L. J. K. B. 435.

Disclaimer of contract for sale of lease.

Where a bankrupt has contracted to sell a lease, the trustee in bankruptcy cannot disclaim the contract without disclaiming the lease.(*g*)

Assignment to man of straw.

A mortgagee cannot escape the obligation of taking a vesting order of the head term to save his interest in the property, by transferring the mortgage to a man of straw as trustee for himself: *Re Smith* (1890), 25 Q. B. D. 537; 59 L. J. Q. B. 554.

Vesting order in mortgagee by sub-demise.

A disclaimed lease will be vested in a mortgagee by sub-demise, or by charge by way of legal mortgage, not as if he had been original lessee, but as if the lease had been assigned to him when the bankruptcy petition was filed: *Re Carter and Ellis* [1905], 1 K. B. 735; 74 L. J. K. B. 442.

Position of mortgagee after acquiring head term.

A mortgagee cannot after 1925 hold a head term by way of mortgage: L. P. Act, 1925, s. 86 (2); it follows that when he acquires the head term he holds it free from any right of redemption.

If bankrupt has purported to assign lease to mortgagee, trustee must disclaim.

If a lessee has, before his bankruptcy, purported to assign his whole term by way of mortgage to a mortgagee this will be unavailing: L. P. Act, 1925, s. 86 (2), 1st Sch., Pt. VIII, the head term will remain in him, and the trustee being under a liability to perform the covenants must consider whether or not it is expedient to disclaim.(*h*)

Legal charge.

(*f*) *Re Holmes* [1908], 2 K. B. 812; 77 L. J. K. B. 1129; *cf.* L. P. Act, 1925, s. 146 (4). "Charge by way of legal mortgage" is defined in L. R. Act, 1925, s. 3 (1) as a charge under which the mortgagee is to be treated as an estate owner as if a mortgage term were vested in him.

(*g*) *Pearce* v. *Bastable* [1901], 2 Ch. 122; 70 L. J. Ch. 446; *Re Bastable* [1901], 2 K. B. 518; 70 L. J. K. B. 784.

(*h*) The decision in *Re Gee* (1889), 24 Q. B. D. 65; 59 L. J. Q. B. 16, is no longer applicable.

The right to disclaim is not confined to property divisible among the creditors, but extends to property of which the bankrupt is a trustee: *Re Maughan* (1885), 14 Q. B. D. 956; 54 L. J. Q. 128, *e.g.*, the nominal reversion vested in a lessee who has mortgaged the property by sub-demise and under the old practice declared himself a trustee of that reversion for the mortgagee.

Property of which bankrupt was trustee may be disclaimed.

The trustee in bankruptcy cannot, however, disclaim the legal estate in settled land which is vested in the bankrupt: S. L. Act, 1925, s. 103; it does not vest in the trustee till the bankrupt becomes entitled free from the limitations powers and charges under the settlement: *ib.*

Settled land.

The right may be exercised in the administration in bankruptcy of estates of deceased insolvents under Bkcy. Act, 1914, s. 130: *Re Mellison* [1906], 2 K. B. 68; 75 L. J. K. B. 595. That section is revived by the Expiring Laws' Continuance Act, 1925.

Insolvent estates.

Where an estate is insolvent the grant of representation will not be severed, save in regard to trust estates: Jud. Act, 1925, s. 155; the estate will be administered according to the rules in Part I of the First Schedule to the Ad. of E. Act, 1925.

Representation to insolvent estates.

The Bkcy. (Amend.) Act, 1926, s. 3, provides for the vesting of property (remaining undistributed) on a second or subsequent bankruptcy, but, in other respects, may be ignored so far as the title to leaseholds is concerned.

Bankruptcy Act, 1926.

Holding over.

The L. & T. Act, 1730, s. 1, provides that "if any tenant for life or lives, or years, holds over any lands, &c., after the determination of his estate, after demand made and notice in writing given, for delivering the possession thereof, by the landlord, &c., or his agent thereunto lawfully authorised, such tenant so holding over shall pay to the person so kept out of possession at the rate of double the yearly value of the lands so detained for so long a time as the same shall be detained." And by the Distress for Rent Act, 1737, s. 18, it is enacted that "in case any tenant shall give notice of his intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice mentioned, the said tenant shall thenceforth pay to the landlord double the rent which he should otherwise have paid during the time that he so continues in possession."

Tenant holding over after demand of possession to pay double annual value of premises.

Tenant holding over after expiration of his notice to quit, to pay double rent.

To enable a landlord to recover double value under the Act of 1730, the holding over by the tenant must be contumacious,

Holding over must be contumacious.

i.e., the holding over must be with the consciousness on the part of the tenant that he has no right to retain possession.(*i*)

What damages may be recovered against tenant holding over.

In one case a landlord, after giving a yearly tenant notice to quit at the end of his year, agreed to let the land to A. from the end of the year, and informed the tenant that he had done so, but the tenant nevertheless held the premises over for another quarter. It was held that the landlord might recover against the tenant as damages the amount of the ordinary damages which he had had to pay in an action brought against him by A. for not giving him possession at the time agreed on and the cost of such action. Also that the fact of the landlord having received from the tenant rent for the quarter during which he held over did not preclude him from bringing the action.(*j*)

Mode of recovering possession of small tenements after determination of tenancy.

With regard to tenancies for a term not exceeding seven years and at a rent not exceeding £20 a year, the Small Tenements, &c., Act, 1838, enables the justices in petty sessions, when the interest of the tenant has ended or been determined by a legal notice to quit or otherwise,(*k*) and such tenant, or (if such tenant does not actually occupy the premises or only occupies part thereof) any person by whom the same or any part thereof shall be then actually occupied, refuses or neglects to deliver up possession, to issue a warrant directing the constables to enter by force and give possession to the landlord. In order to obtain such a warrant the landlord or his agent must serve a written notice on the tenant or occupier of his intention to proceed under the Act, and the notice must be read over and explained to the person served. If the tenant or occupier cannot be found, the notice may be posted in some conspicuous part of the premises.

Where a tenant refused to quit after notice and the landlord altered the premises, and in the course of the work damaged the tenant's furniture, it was held that the tenant could not recover damages: *Jones* v. *Foley* [1891], 1 Q. B. 730; 60 L. J. Q. B. 464.

Emblements.

Emblements.

Where a lease or tenancy is for an uncertain period, and determines after the crops are sown and before harvest, the tenant is as a general rule entitled to the crops or (as they are usually called) the emblements; but if the lease is for a term

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(*i*) *Swinfen* v. *Bacon* (1861), 6 H. & N. 846; 30 L. J. Ex. 368, and see *Wedd* v. *Porter* [1916], 2 K. B. 91; 85 L. J. K. B. 1298.

(*j*) *Bramley* v. *Chesterton* (1857), 2 C. B. (N. S.) 592; 27 L. J. C. P. 23.

(*k*) See *Wride* v. *Dyer* [1900], 1 Q. B. 23; 69 L. J. Q. B. 17, a case under the Act.

certain, the tenant has no such right (in the absence of special custom), for it is his own fault if, in such circumstances, he sows the crops.

On death of landlord entitled for terminable interest, tenancy continues up to end of current year.

The Agr. H. Act, 1923, s. 24 (1), provides that where the tenancy of any holding (see s. 57), held by a tenant at rack rent, determines by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements the tenant shall continue to hold and occupy the holding until the occupation is determined by a twelve months' notice to quit expiring at the end of a year of the tenancy. He is then to quit upon the terms of his tenancy in the same manner as if the tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate. The succeeding landlord is empowered to recover from the tenant in the same manner as his predecessor could have done, a fair proportion of the rent for the period which has elapsed from the death or cesser of the estate of such predecessor to the time of so quitting. This provision is practically obsolete, for leases must, as a rule, be granted after 1925 by estate owners, but it is possible that the tenancy might be created out of a term which was terminated by notice.

The succeeding landlord and the tenant respectively will, as between themselves and as against each other be entitled to all the benefits and advantages and be subject to the terms, conditions and restrictions to which the preceding landlord and such tenant respectively would have been entitled and subject in case the tenancy had been determined in the said manner at the expiration of the twelve months notice.

Law of emblements applied between heir and executors under old law.

The right to emblements was not confined to the case of landlord and tenant. Thus, if an owner in fee simple died before 1926 intestate and before harvest, the then growing crops went to his personal representative as personal estate, though if he had devised the land, the devisee was entitled to the crops as against the executor.(*l*) Where the estates of persons having only limited interests determine by their deaths before harvest, the emblements will go to their personal representatives.

Fixtures.

Fixtures, general law as to.

The general law (see 54 Sol. J. 813) as to things annexed to the freehold is that they become part of it and cannot be severed

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(*l*) *Cooper* v. *Woolfitt* (1857), 2 H. & N. 122; 26 L. J. Ex. 310; after 1898 the executor takes the crops on the freehold land but accounts for them, with

Exception in case of trade and ornamental fixtures.

by a tenant without the consent of the landlord. An exception to this general rule has been established in the case of fixtures set up for the purposes of trade,(*m*) or for purposes of ornament or convenience; as, for example, marble or other ornamental chimney pieces, marble slabs, grates or stoves, or the like, provided that they can be separated from the freehold without any material injury.(*n*)

Tapestry.

The exception applies not only as between landlord and tenant, but also as between tenant for life and remainderman. Tapestry firmly affixed by a tenant for life to the walls of a room was held to be removable by him or his representatives; the presumption being that it was intended for purposes of ornamentation and personal enjoyment as a chattel, and not to enhance the value of the freehold.(*o*)

Agricultural fixtures.

Tenants have special rights in regard to what may be called agricultural fixtures.

Tenant's right to fixtures under Agr. H. Act, 1923.

The Agr. H. Act, 1923, s. 22, gives to a tenant of a holding (as defined by s. 57) the absolute property in all fixtures, including buildings, which were fixed or built by the tenant, and the right to remove them before or within a reasonable time after the end of the tenancy unless—

(i) the tenant has a right to compensation in respect of such fixtures or buildings, or

(ii) they were affixed or built pursuant to an obligation in that behalf or instead of some fixture or building belonging to the landlord.

The tenant has a right to remove fixtures and buildings in respect of which he is not entitled to compensation, and which have not been affixed pursuant to any agreement with the landlord. Before removal the tenant must pay all rent, &c., due to the landlord, and must have performed all the covenants and conditions of the lease. He must give him a month's notice of intention to remove, and the landlord can elect to purchase the

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the land, to the devisee. After 1925 the exception in regard to copyholds can no longer arise.

(*m*) *Poole's Case* (1703), 1 Salk. 368; *Lawton* v. *L.* (1743), 3 Atk. 13; *Dean* v. *Allaby* (1799), 3 Esp. 11; *Fitzherbert* v. *Shaw* (1789), 1 H. Bl. 258; *Re Hulse* [1905], 1 Ch. 406; 74 L. J. Ch. 246.

Fixtures.

(*n*) *Buckland* v. *Butterfield* (1820), 2 B. & B. 54. See generally on the subject of Fixtures, Amos and Ferard on Fixtures; also *Elwes* v. *Mawe* (1802), 2 Smith's L. C. 99; *Mears* v. *Callender* [1901], 2 Ch. 388; 70 L. J. Ch. 621; *Re L. Chesterfield* [1911], 1 Ch. 237; 80 L. J. Ch. 186.

(*o*) *Leigh* v. *Taylor* [1902], A. C. 157; 71 L. J. Ch. 272; but see *Re Whaley* [1908], 1 Ch. 615; 77 L. J. Ch. 367.

fixtures before the expiration of the notice. The tenant must avoid all unnecessary damage in removal and make good all damage. The section applies to fixtures and buildings acquired by a tenant after 1900 or affixed or erected by him after 1883. The definition of an agricultural holding includes a market garden but not an allotment garden: s. 57.

Effect of disclaimer by trustee of bankrupt as regards right to remove fixtures.

Under the Bkcy. Act, 1914, s. 54 (2), a disclaimer by the trustee determines the rights and interests of the bankrupt as from its date only; it does not prevent the trustee from removing the fixtures during the interval between the commencement of the bankruptcy and the date of the disclaimer. If the trustee does not remove them before applying for leave to disclaim, the court will give the landlord the option of taking them at a valuation; and if he declines, will allow the trustee a reasonable time within which to remove them: *Re Moser* (1884), 13 Q. B. D. 738.

Covenants as to fixtures.

Where there is an express covenant as to fixtures, the rights of the parties depend on the terms of the covenant. If a lessee covenants to deliver up to the landlord, at the expiration of the term, fixtures which, in the absence of such covenant, he might have removed, he thereby deprives himself of the right of removing them.(p) A wide covenant to deliver up all fixtures is not confined to landlord's fixtures.(q) If a tenant during his tenancy sells fixtures which he is not entitled to sell, the landlord may confirm the sale and claim the proceeds without waiting for the end of the term: *Re British Red Ash Collieries, Ltd.* [1920], 1 Ch. 326; 88 L. J. Ch. 212.

The Agricultural Holdings Act, 1923 (*improvements*).

Under Agr. H. Act, 1923.

The relative rights of landlords and tenants of agricultural holdings at the determination of the tenancy are regulated by the Agr. H. Act, 1923, which has replaced and consolidated all the previous Acts.(r)

Outgoing tenant to be allowed compensation

By s. 1 of the Agr. H. Act, 1923, a tenant of a holding (which is defined to mean any parcel of land held by a tenant which is either wholly agricultural or wholly pastoral or partly agricultural in respect of three classes of improvements.

(p) As to the construction of covenants as to fixtures, see *Lambourn* v. *M'Lellan* [1903], 2 Ch. 268; 72 L. J. Ch. 617, and cases there cited.

(q) *Leschallas* v. *Woolf* [1908], 1 Ch. 641; 77 L. J. Ch. 345; *Premier Dairies Ltd.* v. *Garlick* [1920], 2 Ch. 17; 89 L. J. Ch. 332; *Re Harvey and Mann*, 89 L. J. K. B. 687; *Pole Carew* v. *W.C. & General Manure Co.* [1920], 2 Ch. 97; 89 L. J. Ch. 559; and see *Slough Picture Hall Co.* v. *Wade*, 32 L. T. R. 542.

(r) As to agricultural holdings generally, see Woodfall, 21st ed., 947, *et seq.*

and partly pastoral or wholly or partially cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord: s. 57), is entitled at the determination of a tenancy, on quitting his holding, to compensation from the landlord for improvements made by the tenant and falling within one or other of the three classes following: Sch. I.

Class I, requiring landlord's consent.

CLASS I, requiring the landlord's previous consent in writing, which may be given either unconditionally or upon terms. Compensation may be substituted by agreement for that payable under the Act: s. 2. The first part of the First Schedule to the Act contains particulars of improvements within this class: As to market gardens: 3rd Sch.

Class II, requiring notice.

CLASS II: Sch. I, Pt. II; Drainage.—The tenant must give notice to his landlord of his intention to execute an improvement comprised in this class, and of the manner in which he proposes to effect it. Such notice must be in writing, and not more than three nor less than two months before the commencement of the work. Upon such notice the parties may agree on the terms as to compensation or otherwise on which the improvement is to be executed: s. 3 (1); and any compensation so agreed is to be substituted for that under the Act: s. 3 (2); or the landlord may (unless the tenant's notice is previously withdrawn) execute the improvement himself and recover from the tenant as rent a sum not exceeding £5 per cent. per annum on the outlay, or not exceeding such annual sum, payable for a period of twenty-five years, as will repay that outlay in that period with interest at £3 per cent.; the Minister of Agriculture may by regulation alter this percentage or period. If the landlord fails to execute the improvement within a reasonable time, the tenant may do so, and he will be entitled to compensation: s. 3 (3). The landlord and tenant may dispense with any notice, and come to an agreement in the contract of tenancy or otherwise between themselves: s. 3 (4).

Class III, not requiring landlord's consent, or notice by tenant.

Improvements to protect against injury.

CLASS III.—In which neither the consent of nor notice to the landlord is required: Sch. I, Pt. III. Where an improvement has been made to comply with s. 30, which enacts that a tenant may freely cultivate his holding provided that he takes all necessary steps to protect the holding from injury or deterioration, the tenant cannot claim compensation under 1st. Sch., Pt. III, in respect of such an improvement: Agr. H. Act, 1923, s. 30 (3). Fair and reasonable compensation may be substituted by agreement for that payable under the Act: s. 4. The third part of the First Schedule to the Act contains particulars of improvements within this class. With regard to repairs to certain buildings, the tenant must, before beginning to execute any such repairs, give to the landlord notice in writing of his intention, together with particulars, and must not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice: see proviso at end of Pt. III of Sch. I.

Tenant to give notice of intention to execute certain repairs.

Where the contract of tenancy was made on or after the 1st of January, 1921, the above provisions as to compensation apply whether or not the tenant was by the terms of the tenancy obliged to make the improvement.

Special provisions as to market gardens:

(i) In the case of contracts made after 1895.

Where it has been agreed in writing after 1895 that the holding, or part of the holding, shall be let or treated as a market garden, the Act applies to the additional improvements mentioned in the Third Schedule to the Act. Such improvements are to be treated as if they were comprised in Pt. III of the First Schedule: s. 48 (1); but see proviso to sub-s. (1) (i) of this section.

(ii) In the case of other contracts.

The provisions of the Act are made retrospective as regards the improvements mentioned in the Third Schedule to the Act in cases where the tenant of a holding, or part of a holding (held under a contract of tenancy current on the 1st January, 1896, which was at that date in use or cultivation as a market garden, with the knowledge of the landlord), has executed on the holding, without having previously received any written notice of dissent by the landlord, any improvement comprised in that Schedule. Where the land consists of part of a holding these provisions apply as if it were a separate holding. Market gardens now come within the Act: s. 57.(*s*)

Principle on which compensation is assessed.

The compensation is based on such sum as fairly represents the value of the improvement to an incoming tenant: s. 1 (1); but benefits given or allowed by the landlord to the tenant in consideration of the tenant executing the improvement, and the value of the manure required to be returned to the holding in respect of crops sold off or removed within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed (s. 1 (2)); are to be taken into account,

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(*s*) As to the powers of the Agricultural Committee of the area to order that part of a holding shall be treated as a market garden, see s. 49.

Tenant's right to compensation under custom not affected.

but the tenant's right to claim any compensation under custom,(t) agreement, or otherwise in lieu of this compensation is not affected: s. 1 (3).

Avoidance of contracts inconsistent with the Act.

Except where the contrary is provided by the Act, any contract, whether under seal or not, whereby a tenant's right to compensation under the Act is lessened or taken away, is void in that respect though the rest of the contract will be valid.

Compensation in case of tenancy under mortgagor where mortgagee takes possession.

Where a tenancy created by a mortgagor is not binding on a mortgagee, the occupier is entitled to the same compensation from a mortgagee in possession as he could have obtained from the mortgagor. If the tenancy is for a term of years not exceeding twenty-one, at a rack rent, or is a tenancy from year to year, a mortgagee, before he deprives the tenant of possession otherwise than in accordance with the terms of the tenancy, must serve on him six months' notice in writing of his intention to do so, and must compensate him for any improvement or expenditure on the land made by him in expectation of remaining in the holding for the full term of his tenancy, unless the improvement is exhausted at the time when the tenancy was determined. Such sum may be set off against rent or other payments due to the mortgagee, and unless so set off may be recovered by the tenant in the manner directed by the Act for the recovery of sums due in respect of compensation from a landlord who is a trustee: Agr. H. Act, 1923, s. 15.

Procedure where compensation claimed.

Where a tenant claims compensation and the parties do not agree, the difference is to be settled by arbitration in the manner prescribed: ss. 5, 16, 17, 18, Sch. II. No claim for compensation can be made after the expiration of two months from the determination of the tenancy, unless the particulars thereof have previously been given, except for an improvement executed after such determination, where the tenant lawfully remains in occupation of part of the holding, in which case notice may be given any time before he quits that part. The arbitration may extend to any claim in respect of breaches of contract or otherwise on either side or for tenant's waste: s. 16.

Recovery of compensation, &c.

Any sum awarded under the Agr. H. Act, 1923, may be recovered upon an order made by a county court: s. 19.

Landlord's right to a charge on

A landlord, on paying compensation to the tenant, may obtain

Local custom.

(t) Customs of the country are impliedly incorporated in contracts of tenancy provided they are not inconsistent with their terms: *Wigglesworth* v. *Dallison* (1779), 1 Doug. 201.

from the Minister of Agriculture and Fisheries a charge on the holding in respect thereof: s. 20.

holding, on payment of compensation.

Right of outgoing tenant to compensation from incoming tenant.

An incoming tenant may, under s. 9, be compelled to pay an outgoing tenant compensation where the particular method of farming adopted by the outgoing tenant has improved the value of the holding.

Record of condition.

These provisions do not apply unless a record of the previous state of the holding has been made and the outgoing tenant has given the landlord notice in writing before the determination of the tenancy that he intends to make the claim.

In assessing the compensation under this section allowance will be made for any compensation payable for improvements under the First or Third Schedule.

Right of tenant: (i) who has paid compensation to outgoing tenant;

An incoming tenant who has, with the consent in writing of his landlord, paid to an outgoing tenant compensation payable under the Act has the same rights to claim compensation on quitting the holding as the outgoing tenant would have had if he had quitted it at the time when the incoming tenant quits it: s. 6.

(ii) on change of tenancy;

A change of tenancy of a holding does not of itself deprive the outgoing tenant of the right to claim compensation in respect of improvements made by him during a previous tenancy: s. 7.

(iii) who has begun improvements when about to quit.

With certain exceptions, a tenant from year to year is not entitled to compensation for improvements begun one year before he quits the holding, or after notice to quit which results in his quitting the holding, and in other cases within one year before the expiration of the tenancy: s. 8.

Compensation to landlord for deterioration of holding.

In certain circumstances a landlord may claim compensation from an outgoing tenant in respect of deterioration of the holding caused by the tenant's failure to cultivate the holding in accordance with the rules of good husbandry (see s. 57) or the terms of the contract: s. 10. These provisions are subject to any stipulation in the contract relating to dilapidations, and before a landlord can benefit by them he must give to the tenant, before the end of the tenancy, notice of his intention to claim compensation under this section.

Compensation for disturbance.

Rules of good husbandry.

By s. 12, a tenant who vacates a holding, as defined in s. 57, pursuant to a notice to quit, is entitled to additional compensation for disturbance, to be assessed by arbitration, unless the notice to quit states that it was given because the tenant failed to cultivate the holding in accordance with the rules of good husbandry (see s. 57) or for any reason given in sub-s. (1) of this section. The agricultural committee of the area is empowered to decide, on the application of the landlord, whether the holding is being cultivated in accordance with the rules of good husbandry or not, and to grant or refuse a certificate to that effect. Upon the grant or refusal of such certificate the tenant or landlord may appeal to an arbitrator against the certificate, but the appeal must be made within seven days of the notification of the grant or refusal thereof.

Appeals.

Compensation not payable where notice is withdrawn.

No compensation is payable where the landlord has offered to withdraw his notice to quit and the tenant has unreasonably refused to accept the offer.

Acts governing assessment of compensation where notice to quit was served in 1920.

Where the notice to quit was served before the 21st May, 1920, the provisions relating to compensation contained in the Agr. H. Act, 1908, apply; but where such notice was given after the above date, but before the 1st January, 1921, the provisions of the Agr. H. Act, 1923, s. 12, apply, whether or not the notice stated the reason why it was given.

Refusal to renew, increase of rent.

Formerly compensation for disturbance was payable on a tenant quitting a holding by reason of the landlord refusing to renew the lease or demanding increased rent on account of improvements: Agr. H. Act, 1908, s. 11. Now such compensation is only payable when the lease is determined by notice to quit or where the tenant has determined his own tenancy by reason of a refusal by the landlord to arbitrate as to the rent payable for the holding under the provisions of the Agr. H. Act, 1923.

Nature of loss in respect of which compensation is to be assessed.

Where compensation for this item is payable, it will be assessed upon the loss or expense directly attributable to the sale or removal of the tenant's household goods, farm implements, fixtures, farm produce or stock, and costs incidental to the preparation of the claim for compensation, not including the costs of arbitration.

Assessment of costs of claim for compensation.

These costs are to be computed as equal to the value of one year's rent of the holding unless they can be proved to be greater, in which case the amount payable is to be increased to the full amount of the costs, but not exceeding two years' rent of the holding.

Claim by allotment garden holder.

By s. 13, a tenant of an allotment garden, which is not used as a market garden, or land not included in the definition of a "holding" in s. 57, whose tenancy has been determined by a notice to quit, without good cause, and for reasons inconsistent with "good estate management" (as to the meaning of these words: Woodfall, 21st ed., 944) is entitled to compensation only for loss or expense directly attributable to the removal or sale of his household goods, farm implements, farm produce or stock, provided that he gives to his landlord—

(*a*) Reasonable opportunity of making a valuation of the goods in respect of which he claims compensation ;

(*b*) Notice in writing within two months after receipt of the notice to quit that he intends to make such claim.

No compensation is payable where the tenant dies within three months before the date of the notice to quit or where the tenant fails to make his claim within three months after quitting : s. 13.

Application to cottages on holdings.

Agricultural labourers, occupying cottages, with or without gardens, on land to which ss. 12 and 13 apply, are, by s. 14, allowed some compensation for disturbance in respect of loss or expense incurred by reason of the determination of the lease of the land upon which their cottages are situated. The rules as to the assessment of this compensation are given in s. 14.

Claim against mortgagee.

By s. 15 compensation is allowed to a tenant of a holding against a mortgagee taking possession, provided that the contract of tenancy is not binding on him.

Compensation for damage by game.

The tenant is entitled to compensation from his landlord for damage to his crops by game in certain cases, but the landlord is entitled to be indemnified by the sporting tenant.(*u*)

Freedom of cropping and disposal of produce.

Provided the tenant makes suitable and adequate provision to protect the holding from injury or deterioration, he has, subject to certain restrictions, notwithstanding any custom of the country or the provisions of any contract of tenancy or agreement, full right to practise any system of cropping the arable land, and to dispose of the produce of the holding. But during the last year of the tenancy, and in the case of a yearly tenancy, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding, the lessor can prescribe the method of cultivation : s. 30.

Application of capital money under S. L. Act in paying compensation.

Capital money arising under the S. L. Act, 1925, may be applied in payment of any money expended and costs incurred by a landlord under the Agr. H. Act, 1923, or any enactment thereby repealed or under custom or agreement in the execution of any improvement comprised in Part I or Part II of the First Schedule to the Act of 1923, and in discharge of any charge in respect of any such improvement created by that Act :

(*u*) S. 11. In this section the word "game" is specially defined ; it does not include ground game.

Agr. H. Act, 1923, s. 21; see also Housing, &c., Act, 1909, s. 7. This does not apply as regards improvements not included in Parts I and II.(*v*)

SECT. VIII.—*The Rent Restrictions Acts.**

Object of the Rent Restrictions Acts.

In consequence of the shortage of houses of low rental value during and shortly after the late War, a number of Acts were passed restricting the rights of landlords of such dwelling-houses to increase their rent or to eject their tenants.

Repeal of emergency War legislation.

The emergency Acts passed for this purpose during the war have been repealed and replaced by the Increase of Rent and Mortgage Interest Restrictions Act, 1920, which is the principal Act.

Acts now in force (1920 to 1925).

This Act was followed by other Acts extending its operation and containing amendments. The only Acts now in force are the Increase of Rent and Mortgage Interest Restrictions Act, 1920 (hereinafter called " the Act of 1920 "), as amended by the Increase of Rent and Mortgage Interest Restrictions Act, 1923 (hereinafter called " the Act of 1923 "), the Rent Restrictions (Notices of Increase) Act, 1923, the Prevention of Eviction Act, 1924, and the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925.(*w*)

Dwelling-houses which are excluded from the operation of the Acts.

Possession of landlord on or after 31st July, 1923.

Under the Act of 1923, s. 2 (1), these Acts do not apply to dwelling-houses which were in the possession of the landlord on, or which came into his possession (otherwise than under an order of the court in consequence of non-payment of rent) after, the 31st July, 1923, unless part of the house has been lawfully sub-let as a separate dwelling-house within the meaning of the Act of 1920, in which case the part sub-let does not become de-controlled by reason of the possession of the rest of the house by the landlord: *Catto* v. *Curry* [1926], 1 K. B. 460; 95 L. J. K. B. 411; *Dunbar* v. *Smith* [1926], 1 K. B. 360; 95 L. J. K. B. 242.

Effect of possession under an order.

Where a landlord has come into possession of any such house under an order or judgment of the court in consequence of

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(*v*) *Re E. De La Warr's S. E.* [1913], 1 Ch. 142; 82 L. J. Ch. 174; S. L. Act, 1925, s. 73 (1) (iv).

(*w*) As to these Acts generally see Sophian's Rent Restrictions Acts, 1920–1925; Foa, 6th ed., pp. 911–66.

*[The Editors gratefully acknowledge the help given by H. T. J. Sophian, Esq., of the Inner Temple, who revised this note.]

Effect on mortgages made before July, 1920.

These Acts also restricted the power of mortgagees under a mortgage created before the 1st July, 1920, to realise their security by foreclosure sale or otherwise, see Sophian, Chap. VIII.

non-payment of rent, the Acts continue to apply as if the landlord had not come into possession after the 31st July, 1923.

Flats after 2nd April, 1919.

Under the Act of 1920, s. 12 (9), houses which were erected or converted into flats after, or were in the course of erection on, the 2nd April, 1919, did not come within the scope of these Acts.

Business premises de-controlled.

Since the 24th June, 1921, all business premises have been de-controlled : Act of 1920, s. 13 ; except those used partly for business purposes and partly as dwelling-houses which are let together under a single tenancy : *ib.*, s. 12 (2).

Mixed letting.

Where there is such a mixed letting, it is a question of mixed fact and law whether or not the premises are to be regarded as having been let as a dwelling-house for the purpose of the Act. For the tests to be applied, see Sophian, 21 ; Second Suppt., 8–11.

It follows that the Rent Restrictions Acts can seldom apply to leases granted *de novo* in the future.

Judicial interpretation of the Acts.

These Acts have received so much judicial interpretation that it is not possible, in a work of this nature, to deal exhaustively with their effect upon existing tenancies.

Expiration of Acts.

Under the Act of 1925 the operation of the full restrictions imposed by the Act of 1920 ceases on the 25th December, 1927, but for another five years after that date the limited restrictions imposed by the Act of 1923, Pt. II, will continue to operate.

Power to contract out in certain cases.

The parties, as respects property affected, may contract out of the Acts if the lease or tenancy agreement is made after the 31st July, 1923, and the tenancy in respect of which it is made is for not less than two years, expiring not earlier than one year after the date fixed (at the time at which the lease was granted) for the expiration (*i.e.*, 25th December, 1927) of the Act of 1920 : Act of 1923, s. 2 (2), as amended by the Act of 1925, s. 1 (3) (b).

Effect of the Rent Restriction (Notices of Increase) Act, 1923.

The Rent Restriction (Notices of Increase) Act, 1923, meets the difficulty arising out of the decision in *Kerr* v. *Bryde* [1923], A. C. 16 ; 92 L. J. P. C. 1, that notices of increase of rent must follow a notice to determine the tenancy.

As the result of this Act a notice of increase of rent operates as if a notice to quit had previously been given : *Aston* v. *Smith* [1924], 2 K. B. 143.

What houses come within the operation of the Acts.

The operation of the Rent Restrictions Acts is confined (x) to dwelling-houses, which include parts of houses let as a separate

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(x) For a summary of the cases in which the Acts do not apply : Sophian, Chap. III, ss. 2–4.

dwelling-house: Act of 1920, s. 12 (2); of which the standard rent or the rateable value does not exceed:—

Standard rents.

(1) In the Metropolitan Police District, including the City of London,(y) £105;

(2) In Scotland, £90; and

(3) Elsewhere, £78 per year.

Where the annual standard rent exceeds one of the amounts above mentioned but the rateable value does not, the house still comes within the Acts; the same rule applies where the standard rent is less than the rateable value.

"Standard rent" (3rd August, 1914).

The standard rent is the rent at which the house was let on the 3rd August, 1914, or, if the house was not let at that date, the rent at which it was last let before that date or, if the house was first let after that date, the first rent fixed: Act of 1920, s. 12 (1) (a).

"Rateable value."

The rateable value means the rateable value on the 3rd August, 1914, or, if the house had not been assessed before that date, the value of the first assessment after that date: Act of 1920, s. 12 (1) (c).

Apportionment of standard rent or rateable value.

Where a house was let as a whole on or before the 3rd August, 1914, and was subsequently let in separate portions, but not so as to constitute each portion a separate dwelling-house with an independent and separate identity to the other portions, an apportionment may be necessary for determining the standard rent or the rateable value of each portion.

The Act of 1920, s. 12 (3), gives the county court power to make such apportionment on the application of either party.

Under the Increase of Rent, &c., Rules, 1920, r. 7, application must be made to the registrar in the first instance.

The registrar may or, if desired by either party, must, refer the matter to the judge.

Reconstruction of house.

No apportionment is required where the conversion of the house into a number of separate dwellings has effected a reconstruction of the house within the Act of 1920, s. 12 (9), for in such a case the Act does not apply.

The distinctions drawn by the courts in these cases are so fine that it is impossible, within the scope of this note, to review the tests which have been applied.

For these tests, see Sophian, 15, *et seq.*, and the current supplement.

(y) For the extent of the Metropolitan Police District, see the Metropolitan Police Acts, 1829 and 1839, Order in Council of the 3rd January, 1840.

Other definitions.

Important definitions will be found in ss. 2 (5), 12 and 15 of the Act of 1920, and s. 18 (5) of the Act of 1923. These definitions must be carefully studied before the Acts can be construed.

General restrictive effect of the Acts.

Where the Act of 1920 applies, landlords may not increase the rent except for the limited purposes prescribed by s. 2 (1) of the Act of 1920, as explained in s. 3 of that Act, and amended, as regards sub-tenancies, by s. 7 (1) of the Act of 1923;(*z*) nor may they eject the tenant and recover possession of the premises except upon the grounds mentioned in s. 5 (1) of the Act of 1920, as amended by s. 4 of the Act of 1923 and s. 1 of the Act of 1924.

Fetters affecting landlord's right to possession.

As regards the landlord's right to possession; the Act of 1920 imposes a restriction on the rights of landlords in addition to the ordinary limitations of those rights.

Thus a landlord cannot recover possession under the Act of 1920, s. 5 (1), until circumstances have arisen which would, independently of that section, have given rise to a right to possession on the part of the landlord. Even where such rights have arisen, the tenant is not deprived of any of the ordinary rights of lessees to relief against forfeiture.

Premiums prohibited.

The restriction on increases of rent cannot be evaded by requiring a premium to be paid as consideration for the grant, renewal or continuance of a tenancy: Act of 1920, s. 8. To charge a premium is made a criminal offence, punishable by a fine of £100: *ib.*, sub-s. (2); nor can an excessive amount be charged for furniture or as key money, for the amount paid in respect of these articles in excess of their true value will be treated as a premium: Act of 1923, s. 9 (1).

Furniture; key money.

Act of 1923 does not apply to Ireland.

The Act of 1920 applies to Ireland, with modifications: s. 18; the Act of 1923 does not: Act of 1923, s. 20.(*a*)

Application of Acts to furnished houses.

Landlords of furnished houses are restrained from reserving a rent yielding more than twenty-five per cent. profit above the profit which might reasonably have been expected on a similar letting in the year ending on the 31st August, 1914: Act of 1920, s. 9.

Service of notice.

(*z*) It is a condition precedent to the recovery of any increase that a requisite notice of intention to increase, as required by the Act of 1920, s. 3 (1), should have been served.

Ireland.

(*a*) Similar Acts have been passed by the Oireachtas in 1923 and 1926. As to Northern Ireland see the Increase of Rent and Mortgage Interest (Restrictions) Acts (Northern Ireland), 1923 and 1925, also the Expiring Laws Continuance Acts (Northern Ireland), 1923 and 1924.

Recovery of overpaid rent.

Where rent has been paid in excess of the amount permitted by the Act of 1920, the excess may be recovered by action or deducted from a subsequent payment of rent (Act of 1920, s. 14), and where the landlord is convicted of an offence under s. 10, the court may order him to refund the excess; if the latter course is adopted no other method of recovery can be resorted to: s. 10.

Result where a tenant of an unfurnished house lets it furnished.

Where a tenant of an unfurnished house lets it furnished to a sub-tenant the tenant loses the benefit of the application of these Acts to an unfurnished house; for, in regard to the application of these Acts to any tenancy, the nature of the tenancy is determined by the tenancy of the occupier: *Prout* v. *Hunter* [1924], 2 K. B. 736; 93 L. J. K. B. 993.

Statutory Tenancies.

Meaning of "statutory tenancy."

A tenant who, by virtue of the Rent Restrictions Acts, retains possession of the property *after* the determination of his tenancy, holds under a "statutory tenancy," the conditions of which are prescribed by the Act of 1920, s. 15, as amended by s. 9 (2) of the Act of 1923.

Terms upon which a statutory tenant is deemed to hold.

Old law.

Where a tenant holds over under a tenancy, not affected by the Rent Restrictions Acts, it is generally a question of fact as to what terms ought to be implied in the new tenancy: *Wedd* v. *Porter* [1916], 2 K. B. 91; 85 L. J. K. B. 1298. In the absence of any implication to the contrary the terms of the old tenancy, so far as they are applicable to a yearly tenancy, will continue.

New law.

Where a tenant holds over under the Rent Restrictions Acts the landlord, even after acceptance of rent, cannot be presumed to have assented to a new tenancy and no agreement to continue the new tenancy upon the terms of the old can be implied: *Davies* v. *Bristow* [1920], 3 K. B. 428; 90 L. J. K. B. 164. The Act, however, provides that the new tenancy shall be held upon the same terms as the old so far as they are not inconsistent with the provisions of the Act of 1920: s. 15.

Interest of a statutory tenant and restriction on power to assign that interest.

A statutory tenancy confers only a personal interest on the tenant which is not assignable: *Keeves* v. *Dean* and *Nunn* v. *Pellegrini* [1924], 1 K. B. 685; 93 L. J. K. B. 203. It can only be determined by such notice as was required under the original contract of tenancy, or, where no notice was required, by three months' notice: Act of 1920, s. 15 (1).

A statutory tenant may not ask for or receive the payment of any sum or other consideration from any person, except his landlord, as a condition of giving possession of the premises. If he does so he will be liable to a fine and to repay the money received: Act of 1920, s. 15 (2).

Statutory tenant may not accept money, &c., in exchange for possession.

The amount which a statutory tenant can charge for furniture or other articles on giving up possession is limited to the true value of such articles: Act of 1923, s. 9 (2).

Restriction on power of statutory tenant to charge for furniture, &c., on giving up possession.

Though a statutory tenant cannot assign his interest, that interest has a pecuniary value to him, as he may bargain with his landlord as to the terms upon which he will give up possession of the property, hence this interest is "property" within the meaning of the Bkcy. Act, 1914, s. 167, and passes to his trustee in bankruptcy: *Parkinson* v. *Noel* [1923], 1 K. B. 117; 92 L. J. K. B. 361.

Effect of a statutory tenant's bankruptcy.

A statutory tenant is not entitled to relief against forfeiture under L. P. Act, 1925, s. 146: *Brewer* v. *Jacobs* [1923], 1 K. B. 528; 92 L. J. K. B. 359.

Relief against forfeiture not applicable to a statutory tenancy.

It is uncertain whether a statutory tenant can sub-let the whole or part of the property: *Keeves* v. *Dean* and *Nunn* v. *Pellegrini*, *supra*, at p. 693. It was suggested in *Parkinson* v. *Noel*, *supra*, that a tenant might validly sub-let part of the property. The better opinion would appear to be that, at any rate, he cannot sub-let the whole, and probably cannot sub-let any part.

Power of a statutory tenant to sub-lease.

In any tenancy to which the Act applies, including a statutory tenancy, a condition is implied under the Act of 1920, s. 16 (2), that the tenant shall afford to the landlord access to the demised property, and all reasonable facilities for executing such repairs as the landlord is entitled to execute.

Right of landlord to access to premises and facilities for executing repairs.

On the death of a statutory tenant his interest passes to his personal representatives: *Mellows* v. *Low* [1923], 1 K. B. 522; 92 L. J. K. B. 363; also Act of 1920, s. 12 (1) (f).

Devolution of the interest of a statutory tenant.

Where the tenant dies intestate his beneficial interest vests in his widow, or in such member of his family as may be agreed upon or decided by the county court until letters of administration are granted: Act of 1920, s. 12 (1) (g). Compare Ad. of E. Act, 1925, s. 46. Pending administration any legal interest vests in the probate judge: *ib.*, s. 9.

Notices of Increase of Rent.

Conditions which must be complied with.

Notices of increase of rent must fulfil the following conditions:—

1. They can only be served after the tenancy could have

Terminable tenancy.

been determined by a notice to quit or otherwise: Act of 1920, s. 3; see also Rent Restriction (Notices of Increase) Act, 1923, s. 1.

Form.

2. They must be in writing and in a form contained in the First Schedule to the Act of 1920 or in a form substantially to the same effect: Act of 1920, s. 3 (2), as amended by the Act of 1923, s. 6 (1).

Relevant facts.

3. They must state truly all the circumstances by which an increase of rent can be justified. Under the Act of 1923, s. 6 (1), the county court has a discretionary power to amend an inaccurate notice where it appears that the inaccuracy was due to a genuine mistake on the part of the landlord; where any untrue or misleading statement is made the landlord is liable to a fine of £10, unless he can prove that it was a genuine mistake: Act of 1920, s. 3.

Commencement of increase.

An increase of rent is not recoverable until four clear weeks after the service of a notice of increase, except where such increase is demanded on account of an increase in rates, in which case one week's notice is all that is required: Act of 1920, s. 3 (2).

SECT. IX.—*Mines (Working Facilities and Support) Act*, 1923.

The Mines (Working Facilities and Support) Act, 1923.

To enable mines to be worked more profitably, and to protect land from subsidence, where no rights of support have been reserved, the Mines (Working Facilities and Support) Act, 1923, Part I, enables rights of mining and support and rights ancillary thereto to be acquired compulsorily.

These rights may be acquired by a tenant for life or statutory owner, and if so acquired, form part of the settled land, and are subject to the settlement: *ib.*, Pt. I, s. 12.

Railway Clauses Act.

Part II of that Act amends and replaces ss. 78 to 85, inclusive, of the Railway Clauses Consolidation Act, 1845, respecting the conditions under which minerals under railways may be worked and what compensation is payable to the owners of those minerals, and neighbouring owners, in respect of any restriction on working minerals.

Protection of railway works.

For the protection of railways against subsidence certain dangerous areas are defined by s. 78 in which mining operations may be prohibited. By s. 85 any rights acquired, and the dangerous areas, may be varied by agreement between the interested parties.

Compromise of claims.

The S. L. Act, 1925, s. 58, confers on tenants for life certain powers to compromise claims and release restrictions; these powers include power to vary the rights mentioned above. By sub-s. (3) the rights under the Waterworks Clauses Act, 1847, may also be varied. These powers are also exercisable by trustees for sale and by personal representatives : L. P. Act, 1925, s. 28 ; Ad. of E. Act, 1925, s. 39.

Act of 1925.

The Mines (Working Facilities and Support) Act, 1925, provides that where, under the Act of 1923, Pt. I, the Railway and Canal Commission have determined that a right should be granted subject to the payment of compensation or consideration, the Commission may order any sum so awarded by them or pending any award such sum as they deem fit, to be paid into court.

Subsidence.

Minerals.

Right to work.

A grant or exception of minerals carries with it the right to work them by all recognised methods, but does not entitle the mine owner to destroy or seriously injure or let down the surface unless such a power is reserved expressly or by necessary implication.

Right to let down surface, &c.

The right to let down the surface will be implied in any case where it is proved to the satisfaction of the court that subsidence would have been the natural and inevitable result of any known method of mining, or that this right may be implied from the terms of the grant.(b)

The court will rely on the evidence before it on each occasion ; there is not yet any satisfactory authority that subsidence inevitably results from mining, whatever system is used, though that appears to be the view of experts.

Duties on Minerals.

Mineral rights duty.

By the Fin. (1909-10) Act, 1910, s. 20, " mineral rights duty," being a tax of one shilling in the pound on the rental value of the right to work minerals, or on wayleaves granted in respect of minerals, is imposed. This duty is still in force.

Taxable minerals.

As to what substances are taxable, see Woodfall, 21st ed., p. 734 ; common clay, brick clay, sand, chalk, limestone and gravel are not subject to the tax, while iron and other metals, coal, pumped brine, china clay and fireclay are.(c)

(b) *Welldon* v. *Butterley Co.* [1920], 1 Ch. 130 ; 88 L. J. Ch. 496 ; *Consett Industrial, &c.* v. *Consett Iron Co.* [1922], 2 Ch. 135 ; 91 L. J. Ch. 630 ; *Davies* v. *Powell Duffryn, &c., Co.*, 91 L. J. Ch. 40, and the cases reviewed therein.

(c) *A.-G.* v. *Salt Union* [1917], 2 K. B. 488 ; 86 L. J. K. B. 1026 ; Fin. (1909-10) Act, 1910, s. 20 (5).

Incidence of the tax.

The burden of mineral rights duty must be borne by the immediate lessor and not by the working lessee; any stipulation to the contrary is void: s. 20 (4). Where, however, the immediate lessor is himself a lessee of the right to work the minerals he may deduct the tax from his rent: s. 21.

Any lessor against whom the tax may be deducted and who refuses to allow deduction is liable to a fine of £50: s. 21 (3).

Excess mineral rights duty, imposed by the Fin. Act, 1915, was abolished by the Fin. Act, 1921.

SECT. X.—*Places of Worship Enfranchisement Act*, 1920.

Enfranchisement of leasehold land held for certain purposes.

Trustees of leasehold properties in England or Wales, held upon trust to be used as places of worship, and actually used as such, may, subject to the following restrictions, acquire the reversion notwithstanding any agreement to the contrary made after the 2nd December, 1920.

Restrictions on such enfranchisement.

The restrictions are as follows:—

(1) The trustees may not exercise the above rights—

- (a) in respect of more than two acres, or
- (b) where they propose to use the property for purposes of worship in contravention of any covenant contained in the lease, or
- (c) in respect of property which forms part of land of which both the leaseholds and freehold reversion are vested in any municipal, local, or rating authority, or which, under any Act or Order, has been acquired for any railway, dock, canal, or other navigation purpose.

(2) The Act does not apply to leases for less than twenty-one years.

Procedure for enfranchisement.

The procedure for enfranchisement is the same as if the trustees had been authorised to acquire the reversion by an Act or Order incorporating the Land Clauses Act, 1845, as modified by s. 2, and the First Sch. to the Act of 1920.

Enfranchisement subject to trusts and conditions.

The estate acquired by the enfranchisement will be subject to the same trusts and conditions affecting user and enjoyment as before, but covenants imposed solely for the benefit of the enfranchised property will continue in force only where the consideration for enfranchisement is paid in the form of a rentcharge and so long only as that rentcharge is payable.

Powers of the Charity Commissioners to

Where the former owner of the reversion proves to the Charity Commissioners that enfranchised premises are being used for a purpose contrary to the terms of the trust, they may order the trustees to sell the property or may prohibit such user by injunction ; for this purpose they may settle contracts.

enforce trusts.

The Charity Commissioners will not exercise these powers where it appears that the wrongful user was permitted by the trustees of the site by mistake, and will be discontinued.

SECT. XI.—*Leases under powers or in Right of Estates.*

Powers of leasing.

Before 1883 it was usual to confer express powers of leasing in realty settlements and Wills, and to confer less extensive powers where land was held on trust for sale. In recent years it has been the practice to confer the S. L. Act powers on trustees for sale by the trust instrument ; this is no longer necessary : L. P. Act, 1925, s. 28.

These express powers were sometimes defective, and their terms were not always strictly complied with.

Confirmation of leases.

To meet these difficulties the Leases Acts, 1849 and 1850, were passed ; these are now reproduced by L. P. Act, 1925, s. 152 : 1 Wolst. & Cherry, 11th ed., 399–401 ; under which certain invalid leases may be construed as contracts to grant a lease with any necessary variations, while other leases are, in effect, confirmed by estoppel, or made to take effect under a power not referred to, if such a power was available. The section does not apply to land held on charitable, ecclesiastical or public trusts.

S. L. Act powers of leasing.

Charity land, &c.

Land held in trust for sale or by personal representatives.

The section will seldom be required, for, in view of the wide powers of leasing conferred by the S. L. Act, 1925, ss. 41–48, which, besides being exercisable by tenants for life (who will be the estate owners) and statutory owners, are also exercisable in regard to land held on charitable, ecclesiastical and public trusts : *ib.*, s. 29 ; and by trustees for sale : L. P. Act, 1925, s. 28 ; and personal representatives : Ad. of E. Act, 1925, s. 39 ; the case where an appropriate power to lease is not available after 1925 will be difficult to find.

Powers of the court.

Moreover, these powers can be supplemented under orders of the court in any exceptional cases : S. L. Act, 1925, s. 64 ; T. Act, 1925, s. 57.

Powers of mortgagors and mortgagees.

The powers of mortgagors and mortgagees in possession to grant leases have been further extended by L. P. Act, 1925, s. 99.

Leases to be granted by estate owner.

After 1925 the main fact to be grasped is that leases, speaking broadly, must be granted by an estate owner (*i.e.*, the legal owner of the fee simple or term, including a legal chargee in possession) in right of his estate or the estate which he is treated as holding. The powers of leasing given to persons in fiduciary positions above mentioned are designed primarily to bind the equitable interests, though, as regards the powers given to mortgagors in possession, they are required to bind legal and other mortgagees, and as regards the powers given to mortgagees in possession to bind the subsequent incumbrancers and the mortgagor.

Basis shifted from powers to estates.

Subject to this exception, a lease granted by an estate owner will, again speaking broadly, be valid at law in right of his legal estate, in place of taking effect out of the estate of some third party in exercise of a power, as was formerly the case where the term took effect by virtue of the Statute of Uses or of some statutory power.

Chargee by way of legal mortgage.

It may be suggested that a lease by a chargee by way of legal mortgage is also an exception. That is so, for he has no term, but he is treated as if he had a legal term and is included in the definition of "Estate Owner."

Express powers of leasing.

Settled land.

Additional powers, how they operate.

Again, having regard to the wide powers of leasing given by statute, it will seldom be necessary to give any express leasing powers. If any additional leasing powers are expressed to be given in relation to settled land to a third party (*e.g.*, to trustees of a settlement instead of to the tenant for life or to the statutory owners) they will be exercisable by the tenant for life or statutory owners as if the powers had been conferred on them by the S. L. Act, 1925, see ss. 108–9.

Semble, if additional powers to grant leases in regard to land held on trust for sale were expressed to be given to persons, other than the trustees for sale, the same principle might be applied; at any rate the trustees for sale would give legal effect to the contract for the lease under L. P. Act, 1925, s. 3 (1) (ii).

What powers operate in equity.

Powers, however created and whenever created, not being powers vested in a legal mortgagee (including a chargee by way of legal mortgage: L. P. Act. 1925, s. 205) or in an estate owner in right of his estate or exercisable under a power of attorney (statutory or express) in his name or on his behalf, operate only in equity: *ib.*, s. 1 (7), the Statute of Uses having been repealed: *ib.*, 7th Sch., but subject to its past operation: *ib.*, s. 1 (10).

Powers exercisable in the name of the estate owner.

A power for disposing of or creating a legal estate (including a term of years), given to a person who is not the estate owner, must, *when practicable*, be exercised in the name and on behalf of the estate owner: *ib.*, s. 7 (4).

Saving of leasing powers, but to be exercised in name of estate owner.

Leases and tenancies at a rent for a term of years absolute authorised to be granted—

(a) by a mortgagor;
(b) by a mortgagee;
(c) by the Settled Land Act, 1925, whether or not extended by any instrument;

may be granted, in the name and on behalf of *the* estate owner, by the person authorised to grant it, whether being *an estate owner* or not: *ib.*, s. 8 (1).

A legal rentchargee can grant a legal term (*ib.*, s. 121) for enforcing the rent: *ib.*, s. 8 (2).

Mortgagors and mortgagees in possession.

Thus a mortgagor in possession (*ib.*, s. 99) can grant a lease in his own name without mentioning the mortgagees; likewise a legal mortgagee who has appointed a receiver or is in possession (*ib.*, s. 99 (2) (19)) can grant a lease in his own name, *primâ facie* it would, if he was a first mortgagee, take effect out of his legal mortgage term (if any) but would bind the mortgagor and other incumbrancers. On the other hand an equitable mortgagee by deed (not being an estate owner) should, when exercising the power, include, in the definition of "the lessor," the estate owner out of whose estate the term will be derived, and "when practicable" sign the name of such estate owner.

Equitable mortgagee.

A chargee by way of legal mortgage is an "estate owner": *ib.*, s. 1 (2) (c), (4); and is in the same position as if he had a legal term; in practice, it will be convenient, where a mortgagee grants a lease, to have a wide definition of "the lessor."

Powers of attorney authorised by statute.

Good examples of powers of attorney, authorised by statute, under which leases can be granted, are given in: *ib.*, s. 29, authorising trustees for sale to delegate their leasing powers to the tenant for life of the proceeds of sale, and s. 99 (19) authorising a mortgagee in possession to delegate his leasing powers to his receiver.

Terms to take effect within twenty-one years.

A term at a rent or in consideration of a fine must take effect within twenty-one years: *ib.*, s. 149 (3).

SECT. XII.—*Summary of statutory leasing powers and matters incidental thereto.*

Wide application of S. L. Act powers.

The most important powers are those conferred by the S. L. Act, 1925, for, as mentioned above, these are not only exercisable by tenants for life and statutory owners (subject to the requisite vesting instrument having been executed) and by the managing trustees of charities, &c., in regard to land held on charitable, ecclesiastical and public trusts: S. L. Act, 1925, s. 29, but also by trustees for sale: L. P. Act, 1925, s. 28, and by personal representatives: Ad. of E. Act, 1925, s. 39.

Summary of S. L. Act powers.

The main leasing powers (*d*) under S. L. Act, 1925, are as follows:—

Ordinary.

(1) For ordinary leases, fifty years (limit): *ib.*, ss. 41 (iv); and 42 (applicable to all leases subject to express exceptions).

Building.

(2) For building, 999 years: *ib.*, ss. 41 (i), 44, 117 (1) (i); for exceptional cases under an order: *ib.*, ss. 46 and 64.

Mining.

(3) For mining, 100 years: *ib.*, ss. 41 (ii), 45, 117 (1) (xv); for exceptional cases under an order: *ib.*, ss. 46 and 64; as to capitalisation of part of rent: *ib.*, s. 47.

Forestry.

(4) For forestry, 999 years: *ib.*, ss. 41 (iii), 48, 117 (1) (x).

Renewals.

(5) Leases pursuant to covenant for renewal: *ib.*, s. 43 (1). For restrictions, &c.: L. P. Act, 1922, 15th Sch., para. 7 (1) (effect of future contract for perpetual renewal); para. 7 (2) (avoidance of contract to renew for more than sixty years); para. 8 (1) (effect of express power to grant perpetually renewable leases); para. 8 (2) (effect of power to grant lease for lives, or for a term determinable on life or marriage).

Effect of power to grant perpetual lease or lease for lives, &c.

Confirmation of leases.

(6) For confirming a void or voidable lease: S. L. Act, 1925, s. 43 (ii); see also L. P. Act, 1925, s. 152.

Restrictions, reservations and stipulations.

(7) As to restrictions, reservations and stipulations generally: S. L. Act, 1925, s. 49. As to the form and effect of legal reservations: L. P. Act, 1925, s. 65.

Surface, or mines and minerals.

(8) As to leases of surface, or of mines and minerals separately: S. L. Act, 1925, s. 50.

Flats and separate floors, &c.

(9) As to leases of flats, or separate floors, &c.: S. L. Act, 1925, s. 117 (1) (ix). See also T. Act, 1925, s. 12 (2), as to construction of powers of disposition of land.

Options and boring agreements.

(10) Options to take leases and to bore for minerals may be granted, provided the option is to be exercised within ten years: S. L. Act, 1925, s. 51.

Leases on acceptance of surrender.

(11) Where a surrender is accepted the value of the lessee's interest in the surrendered lease may be taken into account: *ib.*, s. 52 (5).

Water rights.

(12) A lease, for any term and without rent, of water rights may be granted to statutory bodies: *ib.*, s. 54.

Charitable purposes.

(13) Leases for charitable purposes at less than the best rent may be granted: *ib.*, s. 55.

Small dwellings, &c.

(14) Leases for small dwellings, &c., may be granted under *ib.*, s. 56.

(*d*) For details, see 2 Wolst. & Cherry, 11th ed.

Waiver of covenants, &c.

(15) Covenants in leases may be waived or modified under *ib.*, s. 57 (2).

Variation and licences.

(16) Leases may be varied and licences granted under *ib.*, s. 59.

Apportionment.

(17) Rents and covenants may be apportioned : *ib.*, s. 60.

Predecessor's contracts.

(18) A lease may be granted for giving effect to a predecessor's contract : *ib.*, s. 64.

Leases under an order.

(19) With the leave of the court any lease or transaction relating to leases may be carried out : *ib.*, s. 64.

Mansion house.

(20) The principal mansion house may be leased under *ib.*, s. 65, in some cases the consent of the trustees or the leave of the court may be required : *ib.*

Leases to tenant for life.

(21) Leases may be granted to the tenant for life : *ib.*, s. 68.

Leases without a fine.

(22) Leases without a fine, where the lessee is impeachable for waste, may, where the term does not exceed twenty-one years, be made without notice and though there are no S. L. Act trustees : *ib.*, s. 42 (5). The tenant must be liable for fair "wear and tear" : *Davis* v. *D.* (1888), 38 Ch. D. 499.

Leases not under seal.

(23) Where the term does not exceed three years a tenancy may be created under hand only : *ib.*, s. 42 (5) (ii). But such a lease has the same over-reaching effect as if it were made by deed : *ib.*, s. 72 (4).

Protection of lessees.

(24) Lessees are protected by s. 110 ; if no capital money arises it is not material that there are no S. L. Act trustees : *ib.*, s. 110 (4).

Breaches of covenant.

(25) Damages and compensation for breaches of covenant are to be dealt with under s. 80.

Contracts.

(26) A contract to grant a lease may be entered into : *ib.*, s. 90 ; a preliminary contract to grant a lease or an option does not form part of the title : *ib.*, s. 90 (4).

Minorities.

(27) During a minority, leases, &c., will be granted by the statutory owners or the personal representatives in whom the settled land is vested : *ib.*, s. 26 ; see also s. 102. But if there is a co-tenant for life of full age, he will be the tenant for life for the purposes of the Act : *ib.*, s. 19 (3).

Married women.

(28) A married woman tenant for life can grant a lease without joining her husband : *ib.*, s. 25. As to her trust estates : L. P. Act, 1925, s. 170.

Lunatic or defective.

(29) The Committee or Receiver will grant leases in the name and on behalf of lunatic or defective tenant for life : S. L. Act 1925, ss. 28, 117 (1) (xiii). And see L. P. Act, 1925, s. 22.

Meaning of "tenant for life."

(30) "Tenant for life" includes the persons on whom the

powers are conferred by S. L. Act, 1925, s. 20. This includes an absolute owner subject to a family charge; he can also grant a lease, subject to the charge under L. P. (Amend.) Act, 1926, s. 1, but this would generally be an unjustifiable exercise of that power.

No tenant for life.

(31) Where there is no tenant for life (*e.g.*, during a discretionary trust, or where there is a tenant having an unbarrable estate tail whose land was purchased with money provided by Parliament for public services) leases will be granted by the "statutory owners": S. L. Act, 1925, s. 23.

Tenant for life refusing to act.

(32) If a tenant for life, not having retained a substantial interest, refuses to act, the court can authorise the S. L. Act trustees to grant leases, &c., in his name: *ib.*, s. 24.

Reversionary leases.

(33) A lease may be made to take effect in reversion expectant on an existing lease, but the latter must have not more than seven years to run: *ib.*, s. 42 (1) (ii).

Acceptance of leases.

(34) A tenant for life may accept the grant of a lease: *ib.*, s. 53; the lease becomes a subsidiary vesting deed and the requisite particulars must be endorsed: *ib.* Leasehold land, having sixty years to run may be purchased under: *ib.*, s. 73 (1) (xi), (xii); or, where the reversion is settled, with the leave of the court, though there may be less than sixty years to run: *ib.*, 73 (1) (xiv).

Acceptance of surrenders.

(35) A surrender of a lease may be accepted under: *ib.*, s. 52. Where a new lease is granted at a higher rent the excess is applicable as income: *Re Wix* [1916], 1 Ch. 279; 85 L. J. Ch. 192.

Position where settled land is mortgaged.

(36) Where the settled land is mortgaged the powers of leasing and accepting surrenders, so far as necessary to bind the mortgagees, are only exercisable to the extent authorised by L. P. Act, 1925, ss. 99 and 100, or by the mortgage deed or other instrument in writing. The lease should not contain land not included in the mortgage: *King* v. *Bird* [1909], 1 K. B. 837; 78 L. J. K. B. 499.

The mortgagor in possession can sue on the lessee's covenants: L. P. Act, 1925, s. 98; *Turner* v. *Walsh* [1909], 2 K. B. 484; 78 L. J. K. B. 753.

Powers of attorney in realty settlement.

In realty settlements and Wills, it may be worth while to authorise a tenant for life to delegate his powers to sign tenancy agreements and to make arrangements with tenants where these matters are an everyday occurrence. The power conferred by T. Act, 1925, s. 25 (as amended), only applies where the tenant for life is abroad.

Housing Acts, &c.

Housing Acts, 1890 to 1923, Small Holdings Act, 1908, Land Settlement (Facilities) Act, 1919.

Under the Housing Acts, 1890 to 1923, the Small Holdings Act, 1908, Land Settlement Facilities Act, 1919, provision is made for the acquisition of land, compulsorily and by agreement, for the purpose of erecting houses and providing gardens and small holdings for the working classes.

By S. L. Act, 1925, s. 57, a tenant for life is authorised to grant two acres in any urban parish and ten acres in any rural parish at a nominal rent for the above purposes, all money other than rent received on the exercise of any powers conferred by this section must be treated as capital money: *ib.*, sub-s. (3).

Notices.

A general notice of an intention to lease is sufficient: *ib.*, s. 101; a person dealing in good faith is not concerned therewith: *ib.*

Convicts.

Convicts.

The Forfeiture Act, 1870, authorises a title to be made to a convict's land by his administrator thereunder; this remains in force, the convict's name will be used: L. P. Act, 1925, s. 7 (3), (4).

Trust estates.

The legal estate in the trust property of a convict does not vest in his administrator: T. Act, 1925, s. 65.

Land held on trust for sale.

Repeal of S. E. Act, 1877.

The S. E. Act, 1877, has been repealed (L. P. (Amend.) Act, 1924, 1st Sch.), for though, under s. 46, a tenant for life of the proceeds of land subject to a trust for sale (*Re Laing* (1866), 1 Eq. 416; 35 L. J. Ch. 282) could have granted certain leases, *cf. Taylor* v. *T.* (1876), 3 Ch. D. 145, these powers are no longer required. In such cases the S. L. Act leasing powers are given to the trustees for sale: L. P. Act, 1925, s. 28, and can be delegated to the tenant for life: *ib.*, s. 29.

Leases of land held on trust for sale.

Directly land becomes subject to an immediate trust for sale it ceases to be "settled land": L. P. (Amend.) Act, 1926, Sch., amending S. L. Act, 1925, ss. 1 and 3; and the powers are transferred from the tenant for life to the trustees for sale: L. P. Act, 1925, s. 28.

Order under S. L. Act, 1884, s. 7.

Where, however, an order has been made under S. L. Act, 1884, s. 7, before 1926, authorising the tenant for life of the proceeds to exercise the S. L. Act powers, he can still exercise the powers referred to in the order, but only in the names of the trustees for sale: L. P. Act, 1925, s. 29 (4); *Re Cecil's S. E.* (1926), W. N. 138.

Extension of powers by by the court.

Additional leasing powers can be given to the trustees for sale by an order under T. Act, 1925, s. 57.

Lunatic trustee for sale.

A lunatic trustee for sale must be discharged from the trust before the leasing powers can be exercised: L. P. Act, 1925, s. 22 (2).

Leases by Personal Representatives.

Personal representatives have the same statutory powers as trustees for sale: Ad. of E. Act, 1925, s. 39, and see S. L. Act, 1925, s. 110.

Leases by sole representatives.

A sole personal representative acting as such can grant a lease: L. P. Act, 1925, s. 27 (2), as re-enacted with amendments by L. P. (Amend.) Act, 1926, Sch., even if a fine is charged.

Acting as "statutory owners."

But if the representatives, by reason of being S. L. Act trustees, are acting as statutory owners: S. L. Act, 1925, ss. 26 and 23, then, if a fine is charged and the representative is not a trust corporation, a new or additional trustee must be appointed: *ib.*, s. 30 (3).

Number.

As a general rule, during a minority or the subsistence of a life interest, there will either be two or more representatives or a trust corporation to act: Jud. Act, 1925, s. 160.

Old powers.

General and special representatives.

They have all the powers in relation to land which, under the old law, representatives had in regard to chattels real: Ad. of E. Act, 1925, s. 1; general and special representatives act independently in regard to dispositions of land: *ib.*, s. 24.

Charities and Corporations.

Leases by ecclesiastical persons and bodies.

Independently of S. L. Act, 1925, s. 29, the powers of ecclesiastical persons and bodies to grant leases are regulated by numerous Acts of Parliament. The general effect of those enactments was to prohibit leases for more than twenty-one years (or three lives under the old law) except as regards houses in towns, which might be demised for forty years. Incumbents had to obtain the confirmation of the patron and ordinary in order to bind their successors. Other restrictions were imposed by the Acts.(*e*) The remedial provisions in L. P. Act, 1925, s. 152, do not apply.

(*e*) See Phillimore's Ecclesiastical Law, 2nd ed.; Woodfall, 21st ed., 24, *et seq.*, 87; *Green* v. *Jenkins* (1860), 1 D. F. & J. 454; 29 L. J. Ch. 505; *Eccl. Commrs.* v. *Wodehouse* [1895], 1 Ch. 552; 64 L. J. Ch. 329; *Rickard* v. *Graham* [1910], 1 Ch. 722; 79 L. J. Ch. 378. For leases by universities and colleges, see Universities and College Estates Act, 1925.

Universities and colleges.

Leases by borough, district and parish councils.

At common law a corporation was under no disability in respect of power to grant leases except such as was contained in its constitution: *Smith* v. *Barrett* (1664), 1 Sid. 161.

By the Municipal Corporations Act, 1882, s. 108, as amended by the L. G. Act, 1888, s. 72, municipal corporations cannot grant leases for a longer term than seventy-five years in the case of a building lease, or thirty-one years without fine in the case of any other lease, without the consent of the Ministry of Health: M. of H. Act, 1919. Where before 1835 a corporation was under any liability to renew a lease such lease might be renewed without the consent of the Minister being obtained.

The Housing Acts, 1890 to 1919, enable local authorities and municipal corporations to grant leases, with the consent of the Minister, as sites for the houses for the working classes.

Before leasing for more than one year a parish council must in general obtain the consent of the Ministry of Health, or such consent or approval as is required under the Charitable Trusts Acts: L. G. Act, 1894, s. 8.(*f*)

Persons to grant leases.

General rule.

From the above summary it will be seen that, as a rule, the person to grant a lease will, after 1925, be some person who would make a title to the fee simple or term out of which the lease or tenancy is to be derived, and that person is the estate owner, or a person who, under an express or statutory power of attorney, has power to sign the name of the estate owner.

Leases by mortgagors, or mortgagees or their receivers.

To a limited extent, leases made by mortgagors and mortgagees while in possession or after the appointment of a receiver, may be treated as an exception.

These powers given by L. P. Act, 1925, s. 99, authorise a lease to be granted:—

Ordinary leases.

(1) For agricultural or ordinary purposes for twenty-one years (limit), or if the mortgage is made after 1925, or the section is otherwise made applicable, then for not more than fifty years.

Building leases.

(2) For building leases for a term not exceeding ninety-nine years, or if the mortgage is made after 1925, or the section is otherwise made applicable, then for 999 years. For the meaning of "building leases": *ib.*, s. 205 (1) (iii).

Where minerals are not taken into account in ascertaining the value of the security, it is common, in mortgages to authorise

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(*f*) As to further powers to grant and accept leases: Woodfall, 21st ed., 40–110.

the grant of any lease which could have been made under the S. L. Act, 1925.

Making of title on behalf of infants beneficially interested.

To avoid confusion it may be expedient here to summarise the different modes of granting a lease or making title, according to the circumstances of each case, where an infant is concerned.

Infant solely and beneficially entitled (settled land).

(1) Where an infant is solely and beneficially entitled to a legal estate or would have been tenant for life if of full age, title is made by personal representatives or statutory owners: S. L. Act, 1925, s. 26; see also L. P. Act, 1925, s. 19 (1).

Infant beneficially entitled with other infants (settled land).

(2) The same applies where the infant is entitled as above with other infants, until one of them attains full age: S. L. Act, 1925, s. 26.

Infant tenant for life with a person of full age (settled land).

(3) Where an infant is a tenant for life with one or more persons of full age, the person or persons of full age make title: *ib.*, s. 19 (3).

Legal estate conveyed to infant and person of full age beneficially (trust for sale).

(4) Where a legal estate is expressed to be conveyed to an infant and one or more other persons beneficially, the persons of full age make title as trustees for sale: L. P. Act, 1925, s. 19 (2).

Infant solely and beneficially entitled before 1926 (settled land).

(5) If an infant is solely and beneficially entitled to a legal estate or as tenant for life before 1926, the legal estate vests in the S. L. Act trustees, or, if none, in the Public Trustee, who make title: S. L. Act, 1925, 2nd Sch., para. 3, unless the land was vested in a personal representative.

Infants beneficially entitled to legal estate before 1926 (settled land).

(6) If two or more infants are beneficially entitled to a legal estate before 1926, it vests in the S. L. Act trustees or the Public Trustee (till other trustees are appointed) under *ib.*, and they make title, unless the legal estate was vested in a personal representative, who would retain it: *ib.* See also L. P. Act, 1925, 1st Sch., Pt. III, para. 1.

Two or more infants, tenants for life before 1926 (settled land).

(7) The same applies where there are two or more infants who are tenants for life before 1926; the legal estate vests under S. L. Act, 1925, 2nd Sch., para. 3.

Infant beneficially entitled before 1926 with person of full age (trust for sale).

(8) Where, before 1926, a legal estate was vested in an infant beneficially with one or more persons of full age, it vests in those of full age on trust for sale: L. P. Act, 1925, 1st Sch., Pt. III, para. 2, and they make title, though power is given: *ib.*, to appoint new trustees in place of the infant if there is only one trustee for sale.

Infant tenant for life with person of

(9) If, before 1926, an infant was tenant for life with one or more persons of full age the legal estate vests in those of full

age: L. P. Act, 1925, 1st Sch., Pt. II, para. 5; S. L. Act, 1925, s. 19.

full age before 1926 (settled land).

(10) Where land is partitioned by trustees for sale, the part set aside for the infant remains subject to the trust for sale: L. P. Act, 1925, s. 28; similarly if land is appropriated under Ad. of E. Act, 1925, s. 41, for the benefit of an infant, it remains subject to the trust for sale.

Land partitioned or appropriated (trust for sale).

The general principle is fairly clear, thus, where there is a co-beneficiary of full age he will take the legal estate, either as tenant for life or on trust for sale (as the case requires); in other cases the land is treated as settled land, save where there is a subsisting trust for sale. In no case is the land taken from a personal representative.

General principle.

Where the legal estate vests in the Public Trustee under S. L. Act, 1925, 2nd Sch., para. 3, and he does not act, no trustees being appointed in his place, it re-vests in the infant when he attains full age: *ib.*, para. 3 (1) (v).

Re-vesting in an infant.

SECT. XIII.—*Other matters relating to leases.*

A tenant cannot, during his possession of the property demised, dispute the title of the landlord under whom he entered.(*g*) This rule extends to an under-tenant.(*h*) But a tenant may show that the landlord's title has expired.(*i*) He may do that (among other ways) by showing an eviction either actual or constructive. Thus, if a tenant is evicted by a title paramount to the lessor's, he may plead such eviction; *semble*, it is not necessary that he should wait to be actually evicted, but if he attorns to a person who has a right to evict him, and has actually commenced proceedings for that purpose, that is equivalent to an eviction.(*j*) But a mere payment of rent to a party who threatens expulsion is not a constructive eviction.(*k*) An attornment, without the consent of the lessor, may be void: L. P. Act, 1925, s. 151 (2); this does not apply to an attornment made pursuant to an order or judgment, or to a former mortgagee where the right of redemption is barred, or to any other person rightfully deriving title under the lessor: *ib.*

Lessee estopped from disputing his landlord's title, but may show that it has expired.

Attornment.

(*g*) *Doe* v. *Smythe* (1815), 4 M. & S. 347; *Wood* v. *Day* (1817), 1 Moore, 389; *A.-G.* v. *Hotham* (1827), 3 Russ. 415; *Fleming* v. *Gooding* (1834), 10 Bing. 549; 3 L. J. C. P. 214; *Francis* v. *Doe* (1838), 4 M. & W. 331; 8 L. J. Ex. 280.

(*h*) *L. & N. W. Ry. Co.* v. *West* (1867), L. R. 2 C. P. 553; 36 L. J. C. P. 245.

(*i*) 1 Wms. Saund. 418; *Neave* v. *Moss* (1823), 1 Bing. 360; 2 L. J. (O. S.) Ch. 25; *Hopcroft* v. *Keys* (1833), 9 Bing. 613.

(*j*) *Poole Corpn.* v. *Whitt* (1846), 15 M. & W. 571; 16 L. J. Ex. 229.

(*k*) *Delaney* v. *Fox* (1857), 2 C. B. (N.S.) 768; 26 L. J. C. P. 248.

Though a tenant cannot dispute his lessor's title, a third party may. If, therefore, a person lets property to which he has no title, he cannot distrain, for arrears of rent, the goods belonging to a third person which happen to have been brought on to the premises by the tenant's licence: *Tadman* v. *Henman* [1893], 2 Q. B. 168.

Estoppel applicable to action for trespass.

The doctrine of estoppel is applicable to an action for trespass as well as for ejectment: *Delaney* v. *Fox*, 2 C.B. (N.S.) 768.

Tenant is bound not to confound boundaries.

A tenant is bound to keep, during his tenancy, and to leave at the end of it, his landlord's property not in any way confounded with his own: *A.-G.* v. *Fullerton* (1813), 2 V. & B. 264; and the court may at any time during the tenancy, as well as at the end of it, direct an inquiry to ascertain the boundary: *Spike* v. *Harding* (1878), 7 Ch. D. 871; 47 L. J. Ch. 323. The same rule formerly applied to a copyhold tenant: *Searle* v. *Cooke* (1890), 43 Ch. D. 519; 59 L. J. Ch. 259.

Boundary wall.

A demise of land surrounded by a boundary wall *primâ facie* includes both sides of that wall.(*l*)

Practice as to preparation of leases.

In the absence of special stipulation, it is the custom for the lessor's solicitor to prepare the lease at the expense of the lessee. A lessor who has paid his own solicitor for drawing the lease can recover the money from the lessee. But the lessee is not bound to pay for the counterpart.(*m*)

Stipulations on a sale of an interest in land preventing lessee from employing his own solicitor void.

A stipulation, on a sale of an interest in land, that the conveyance is to be prepared by the vendor's solicitor at the expense of the purchaser is void: L. P. Act, 1925, s. 48 (1). This applies if a sale is effected by demise or sub-demise; it does not prevent the vendor furnishing a form, from which the draft can be prepared, and charging a reasonable fee for the form, nor affect the right of a vendor, selling solely in consideration of a rentcharge, from stipulating that the draft is to be prepared by his solicitor at the purchaser's expense: *ib.* "Sale" includes an extinguishment of manorial incidents, but otherwise means a "sale properly so called": *ib.*, s. 205 (1) (xxiv).

Preparation of assignments.

A provision in a lease reserving a right to the lessor or his solicitor to prepare an assignment at the purchaser's expense, or which restricts his right to have the assignment carried out by his solicitor, is void: *ib.*, s. 48 (2). If a stipulation is thus rendered void a covenant

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(*l*) *Hope Bros.* v. *Cowan* [1913], 2 Ch. 312; 82 L. J. Ch. 439; *Goldfoot* v. *Welch* [1914], 1 Ch. 213; 83 L. J. Ch. 360.

(*m*) *Grissell* v. *Robinson* (1836), 3 Bing. N. C. 10; *Re Negus* [1895], 1 Ch. 73; 64 L. J. Ch. 79; *Re Gray* [1901], 1 Ch. 239; 70 L. J. Ch. 133; *Re Fletcher and Dyson* [1903], 2 Ch. 688; 72 L. J. Ch. 791.

to register assignments, &c., is implied : *ib.* Save where a sale is effected by demise or sub-demise, the section does not affect the law relating to the preparation of a lease or underlease : *ib.*, s. 48 (3).

Lessee may retain lease after its termination.

The lessee is entitled to retain the lease after its expiration by lapse of time, or its determination by re-entry, or its surrender.(*n*)

SECT. XIV.—*Stamps on leases and agreements for leases.*

The Stamp Act, 1891, as amended by s. 75 of the Fin. (1909-10) Act, 1910, imposes (as to stamps on leases : Alpe, 18th ed.) the following duties on leases :—

	£	*s.*	*d.*	
(1) For any definite term not exceeding a year : Of any dwelling-house, or part of a dwelling-house, at a rent not exceeding the rate of £10 per annum	0	0	1	Dwelling-house, not exceeding one year.
(2) For any definite term less than a year :				For less than a year.
(a) Of any furnished dwelling-house or apartments where the rent for such term exceeds £25 .	0	5	0	
(b) Of any lands, tenements, or heritable subjects, except or otherwise than as aforesaid . .	The same duty as a lease for a year at the rent reserved for the definite term.			
(3) For any other definite term, or for any indefinite term : Of any lands, tenements, or heritable subjects :— Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security :				Premium or fine.
In respect of such consideration	The same duty as a conveyance on a sale for the same consideration.			

Leases at a premium under £500.

Where the consideration or part of the consideration for a lease consists of money, stock or security (other than rent) the amount or value of which does not exceed £500 and the instrument contains a statement certifying that the transaction does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration (other than rent) exceeds £500, the double duties imposed by s. 75 of the Fin. (1909-10) Act, 1910, do not apply, but the exemption does not have effect where the rent exceeds £20 a year : Rev. Act, 1911, s. 15.

Ad valorem on rent.

Where the consideration, or any part of the consideration, is any rent :
In respect of such consideration :
If the rent, whether reserved as a yearly rent or otherwise, is at a rate, or average rate :

(*n*) *Hall* v. *Ball* (1841), 3 Man. & G. 242 ; *Elworthy* v. *Sandford* (1864), 3 H. & C. 330 ; 34 L. J. Ex. 42 ; *Knight* v. *Williams* [1901], 1 Ch. 256 ; 70 L. J. Ch. 92.

—	If the term does not exceed 35 years, or is indefinite.	If the term exceeds 35 years, but does not exceed 100 years.	If the term exceeds 100 years.
	£ s. d.	£ s. d.	£ s. d.
Not exceeding £5 per annum ..	0 1 0	0 6 0	0 12 0
Exceeding			
£5 and not exceeding £10 ..	0 2 0	0 12 0	1 4 0
£10 „ „ £15 ..	0 3 0	0 18 0	1 16 0
£15 „ „ £20 ..	0 4 0	1 4 0	2 8 0
£20 „ „ £25 ..	0 5 0	1 10 0	3 0 0
£25 „ „ £50 ..	0 10 0	3 0 0	6 0 0
£50 „ „ £75 ..	0 15 0	4 10 0	9 0 0
£75 „ „ £100 ..	1 0 0	6 0 0	12 0 0
£100			
For every full sum of £50, and also for any fractional part of £50 thereof	0 10 0	3 0 0	6 0 0

(4) Of any other kind whatsoever, not hereinbefore described . . . . £ 1 s. 0 d. 0

The stamp on a counterpart of a lease is 5*s.*, or if the duty on the original lease is less than 5*s.*, the same as that on the original lease.

The expression "a lease of any other kind" is confined to leases of lands, tenements, and hereditaments.(*o*)

A lease for ninety-nine years if A., B. and C. or any of them should so long live, with a perpetual right of renewal, had to be stamped as a lease for a definite period of ninety-nine years.(*p*)

The Stamp Act, 1891, also contains the following provisions (*q*) relating to stamps on leases:—

Agreements for not more than thirty-five years to be charged as leases.

Section 75.—(1) An agreement for a lease or tack, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding thirty-five years, or for any indefinite term, is to be charged with the same duty as if it were an actual lease or tack made for the term and consideration mentioned in the agreement.

(2) A lease or tack made subsequently to and in conformity with such an agreement, duly stamped, is to be charged with the duty of sixpence only.

Leases, how to be charged in respect of produce, &c.

Section 76.—(1) Where the consideration, or any part of the consideration, for which a lease or tack is granted or agreed to be granted, consists of any

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(*o*) *Jones* v. *I. R. Commrs.* [1895], 1 Q. B. 484, 492; 64 L. J. Q. B. 84.

(*p*) *Earl of Mount-Edgcumbe* v. *I. R. Commrs.* [1911], 2 K. B. 24; 80 L. J. K. B. 503; such a lease could not be granted after 1925: L. P. Act, 1922, 15th Sch.; L. P. Act, 1925, s. 149 (6).

(*q*) As the Fin. (1909-10) Act, 1910, only doubles the stamp duties chargeable under the heading "Lease or Tack" in the First Schedule to the Stamp Act, 1891, it is conceived that the duties expressly mentioned in these sections are not affected.

produce or other goods, the value of the produce or goods is to be deemed a consideration in respect of which the lease or tack or agreement is chargeable with *ad valorem* duty.

(2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of the produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at the given sum, or according to the permanent rate.

Statement as to value to be deemed true.

(3) A lease or tack, or agreement for a lease or tack, made either wholly or partially, for any such consideration, if it contains a statement of the value thereof, and is stamped in accordance with the statement, is, so far as regards the subject-matter of the statement, to be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or tack or agreement is in fact not duly stamped.

No additional duty on account of penal rent.

Section 77.—(1) A lease or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement, of or relating to the same subject-matter.

No additional duty on account of covenant to build.

(2) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration, either of a covenant by the lessee to make or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is not to be charged with any duty in respect of such further consideration.(*r*)

Duty on leases by ecclesiastical corporations.

(3) No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings.

[(4) This sub-section has no application to land in England.]

(5) An instrument whereby the rent reserved by any other instrument chargeable with duty, and duly stamped as a lease or tack, is increased, is not to be charged with duty otherwise than as a lease or tack in consideration of the additional rent thereby made payable.

Duty in certain cases may be denoted by adhesive stamp.

Section 78.—(1) The duty upon an instrument chargeable with duty as a lease or tack of—

(a) any dwelling-house, or part of a dwelling-house, for a definite term not exceeding a year, at a rent not exceeding the rate of ten pounds per annum; or

(b) any furnished dwelling-house or apartments, for any definite term less than a year, and upon the duplicate or counterpart of any such instrument:

may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

Further consideration.

(*r*) See *British Electric, &c., Co.* v. *I. R. Commrs.* [1902], 1 K. B. 441; 71 L. J. K. B. 92. The Revenue Act, 1909, s. 8, provides that sub-s. (2) "shall not apply as respects any further consideration in the lease consisting of a covenant which, if it were contained in a separate deed, would be chargeable with *ad valorem* duty, and accordingly the lease shall in any such case be charged with duty in respect of any such further consideration under s. 4 of the Stamp Act, 1891."

Penalty in certain cases.

(2) Every person who executes or prepares or is employed in preparing any such instrument (except letters or correspondence) which is not, at or before the execution thereof, duly stamped, shall incur a fine of £5.

Penalty in other cases.

As regards leases not falling within the Stamp Act, 1891, s. 78, the lessee is liable to forfeit £10 if he does not stamp it properly within thirty days after its first execution, or, if executed abroad, thirty days after its first being received in the United Kingdom: Stamp Act, 1891, s. 15.

Abolition of land value duties.

Increment value duty, undeveloped land duty and reversion duty have been abolished by the Fin. Act, 1920, s. 57; this does not apply to mineral rights duty, which is still in force.

DIVISION IX.

LEASES AND INSTRUMENTS RELATING TO LEASES.

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SECTION I.

PARTIES, DEFINITIONS, AND OPERATIVE PARTS.

[Heading to the Lease if the title is registered under L. R. Act, 1925.]

[H.M. Land Registry.
District ——
Title No. ——
Property ——]

No. 1.

By absolute owner.

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. [and X. Y., of, &c.] (hereinafter called the Lessor[s], which expression, where the context admits, includes the persons deriving title under him [the persons from time to time entitled in reversion immediately expectant on the term hereby granted]).(*a*) of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits,

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Definition of "Lessor."

(*a*) This definition is applicable whether the lessor is a freeholder or a leaseholder (Ad. of E. Act, 1925, Pt. 1) under which land, whether freehold or leasehold, passes to the personal representatives.

Two or more lessors.

If there are two or more lessors they would (unless the land is settled land or charity land) hold on trust for sale: L. P. Act, 1925, s. 36. This does not affect the beneficial interests in the proceeds of sale, or the rights of lessors as beneficial owners to grant any lease which the law permits.

Trustees for sale.

If they are not between them absolutely entitled to the proceeds of sale they can still, as trustees for sale, exercise the statutory powers conferred by L. P. Act, 1925, s. 28. Thus, the fact that a trust for sale is imposed, does not lessen, but increases, their powers. There can be no tenants in common of land, but only of the proceeds of sale and of the rents and profits until sale.

includes the persons deriving title (*b*) under him), of the other part: WITNESSETH, and it is hereby declared, in consideration of the rent hereinafter reserved and of the covenants by the Tenant herein contained as follows:—

1. THE Lessor hereby demises (*c*) unto the Tenant:

ALL THAT, &c. (*see Forms in Sect.* II, *Purchase Deeds, Vol.* I, *pp.* 471 *et seq.*). *In the case of registered land say* "land comprised in the title above referred to" *or describe the land and say* "shown and edged —— on the plan hereto, being part of the land comprised in the title above referred to,"

TO HOLD unto the Tenant[s as joint tenants] for the term of —— years from the —— day of ——,

YIELDING AND PAYING therefor, during the said term, the yearly rent of £—— by four equal quarterly payments on the (*d*) 25th March, the 24th June, the 29th September, and the 25th December in every year, and so in proportion for any less period than a year clear of all deductions (except in respect of landlord's property tax [land tax] and tithe rentcharge), the first payment to be made on the —— day of —— next.(*e*)

Variations on demises to joint tenants.

(*b*) If the lease is granted to joint tenants, the definition will be :— (hereinafter called the Tenants, which expression, where the context admits, includes the persons from time to time entitled to the term hereby granted).

Tenants in common.

It is useless to purport to grant a lease to persons as tenants in common or otherwise in shares; the effect would be to vest the term in them or in the four first-named, as trustees for sale on the statutory trusts: L. P. Act, 1925, ss. 34 (2), 35 (as amended).

Number of trustees for sale.

Save for the purposes of charitable, ecclesiastical or public trusts, where a trust for sale of land is created after 1925, there cannot be more than four trustees: T. Act, 1925, s. 34 (2), hence, subject to the exceptions in *ib.*, s. 34 (3), it is useless to purport to grant leases to more than four lessees, not being tenants for life acquiring the term as settled land under S. L. Act, 1925, s. 53, for unless the land is settled land or charity land it must be subject to a trust for sale if it is vested in joint tenants: L. P. Act, 1925, ss. 34 (2) and 36, though mortgage terms, subject to a right of redemption, are not held on trust for sale.

Construction of leases.

In a lease or tenancy agreement made after 1925, "month" means "calendar month," "person" includes a corporation, the singular includes the plural and vice versa, and the masculine includes the feminine, unless the context otherwise requires: L. P. Act, 1925, s. 61.

Implied covenant.

(*c*) The words "demise" and "let" imply a covenant for quiet enjoyment: *Markham* v. *Paget* [1908], 1 Ch. 697; 77 L. J. Ch. 451. The implied covenant does not apply after the lessor has parted with his interest: *Baynes & Co.* v. *Lloyd* [1895], 2 Q. B. 610; 64 L. J. Q. B. 787; or extend to acts of persons claiming under title paramount: *Jones* v. *Lavington* [1903], 1 K. B. 253; 72 L. J. K. B. 98; see also Norton on Deeds, 499 *et seq.*

Quarter days.

(*d*) The next quarter day occurring after the date of the lease should be put first.

Registered land.

(*e*) If the lessor's title is registered under the L. R. Act, 1925, the lease or

No. 2.

By mortgagor and mortgagee.(*f*)

[*Heading where the Lessor's title is registered as in Form No.* 1.]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B.,

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underlease will be granted by the registered proprietor under *ib.*, s. 18 (1) (e) or s. 21 (1) (d). If the term does not exceed twenty-one years, the lessee will *not* register his title thereto ; nor in that case need any notice be registered against the lessor's title, provided the lease is granted at a rent *without* taking a fine, but the lease will nevertheless take effect as a registered disposition : *ib.*, ss. 19 (2), 22 (2). In other cases, however, the lessee should register his title and require a notice to be entered in the charges register against the title of the lessor. And see L. R. Rules, 1925, rr. 21, 44 to 47, 75, 91, 186 to 189, 200 to 211 ; Forms 2, 3, 59 in the Schedule thereto.

When the lessee need not register.

Form of lease of registered land.

No form of a lease is prescribed for registered land : L. R. R., 1925, r. 75. The lease, as also a grant in fee reserving a rentcharge, becomes the charter of the title *after* registration of the title to the lease or the land affected by the rentcharge. Hence, in both these cases the form (subject in the case of the reservation of a chief rent to certain exceptions) is the same as for unregistered land, provided that the parcels show that the land is included in the registered title. Even in the case of transfers of registered land the parties may be defined as " the vendor," &c., and the instrument can be framed in the third person. This is obviously desirable in the case of a lease.

Leases by registered chargees.

As to leases granted by the proprietor of a registered charge : L. R. Act, 1925, s. 34 (1).

Lease by mortgagor and mortgagee.

(*f*) This Form can be made use of where a mortgagor or mortgagee in possession, or after the appointment of a receiver, is exercising his statutory powers, and is signing the name of the other as being the estate owner out of whose interest the term is to take effect. This form is essential where (1) the mortgage was before 1882 and there is no agreement applying s. 99 of the L. P. Act, 1925, to a mortgage made before 1882 ; or (2) the mortgage contains a provision that s. 99 shall not apply ; or (3) the term to be granted is in excess of the periods authorised by s. 99 ; or (4) in the case of grants of mining leases which are not authorised at all by s. 99. Before 1911 there was no implied power for a mortgagor to accept a surrender of a lease for the purpose of granting a lease authorised by s. 99 : *Robbins* v. *Whyte* [1906], 1 K. B. 125 ; 75 L. J. K. B. 38 ; but he could sue on the covenants : *Turner* v. *Walsh* [1909], 2 K. B. 484 ; 78 L. J. K. B. 753 ; L. P. Act, 1925, s. 98. Under L. P. Act, 1925, s. 100, where the mortgage deed is executed after 1911, a mortgagor or mortgagee in possession may accept surrenders of leases with a view only to the grant of an authorised lease. For a precedent of such a surrender, see Vol. I, pp. 515–17. The lease or leases granted in consideration of the surrenders must comprise the whole of the land surrendered, the term must not be less than the surrendered term and must take effect in possession within one month of the surrender, and the rent reserved must not be less than the rent reserved by the surrendered lease : L. P. Act, 1925, s. 100 (5). A mortgagor exercising the powers conferred by s. 99 must not include in the lease property which is not comprised in the security : *King* v. *Bird* [1909], 1 K. B. 837 ; 78 L. J. K. B. 499.

Surrender and lease under L. P. Act, 1925, s. 100.

Counterpart of lease granted by mortgagor.

Under L. P. Act, 1925, s. 99 (11), the mortgagor must hand over a counterpart of any lease granted by him under the statutory power, or any extension thereof to the mortgagee, but an omission to do this does not invalidate the lease : *Public Trustee* v. *Lawrence* [1912], 1 Ch. 789 ; 81 L. J. Ch. 436.

Leases by mortgagee.

A mortgagee in possession, or after a receiver has been appointed, may grant the leases authorised by L. P. Act, 1925, s. 99 ; he may also delegate his powers to the receiver (*ib.*, sub-s. (19)); but the lease must be granted in the name of the mortgagee or estate owner : s. 8.

of, &c. [and X. Y., of, &c.] (*Mortgagee*) (hereinafter called the Lessor[s], which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant upon the term hereby granted), of the 1st part, C. D., of, &c. (*Mortgagor*) (hereinafter called the Mortgagor, which expression, where the context admits, includes the persons deriving title under him), of the 2nd part, and E. F., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the 3rd part:

WITNESSETH, and it is hereby declared, in consideration, &c. (*as in Form No.* 1), as follows :—

1. THE Lessor[s], at the request of the Mortgagor, hereby demise[s] and the Mortgagor hereby demises and confirms unto the Tenant (*continue as in Form No.* 1, *and add the special clauses contained in Prec.* IV, *p.* 1053).

No. 2A.

By mortgagor or mortgagee in possession or after receiver has been appointed.(*g*)

[*Heading, if the Lessor's title is registered as in Form No.* 1; *but if the lease is granted by a registered chargee, also add a reference to the number of the registered charge.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. [and X. Y., of, &c.] (hereinafter called the Lessor[s], which expression includes the Estate Owners, out of whose interests the term hereinafter granted is to take effect, and also where the context admits, the persons from time to time entitled in reversion immediately expectant on the term hereby granted) of the one part, and C. D., of, &c., and R. S., of, &c. (hereinafter called the Tenants, which expression, where the context admits, includes the persons from time to time entitled to the said term) of the other part. (*Continue as in Form No.* 1.)

No. 3.

By tenant for life, or statutory owners under the S. L. Act, 1925.(*h*)

[*Heading as in Form No.* 1 *if the Lessor's title is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. [and X. Y., of, &c.] (hereinafter called the Lessor[s], which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant upon the term hereby granted), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the

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Leases under the statutory power.

(*g*) See the notes to the last form, which can be used where the lessor knows who the other estate owners are whose names he can sign. This, however, may not be "practicable": L. P. Act, 1925, s. 7 (4), in such cases Form No. 2A will be used, and will have the requisite binding effect under *ib.*, s. 99.

Leases by tenant for life.

(*h*) In practice, leases by tenants for life are usually made without recitals and without reference to the S. L. Act, the lessor being defined as in the text: *Mogridge* v. *Clapp* [1892], 3 Ch. 382, 385; 61 L. J. Ch. 534; L. P. Act, 1925, s. 151 (6). In mining leases, or where the title is investigated, a recital context admits, includes the persons deriving title under him), of the other part. (*Continue as in Form No.* 1.)

No. 4.

Lease of minerals by a tenant for life, the S. L. Act trustees joining being entitled to part of the rent.(*i*)

[*Heading as in Form No.* 1 *if the Lessor's title is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant on the term hereby granted) of the 1st part, C. T., of, &c., and N. T., of, &c. (hereinafter

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is added, see Form No. 4. For powers of leasing, see S. L. Act, 1925, ss. 41–48.

Lease to wife or to self.

A tenant for life may grant a lease to his wife: *Gilbey* v. *Rush* [1906], 1 Ch. 11; 75 L. J. Ch. 32; provided that he complies with the requirements of the S. L. Act and acts in good faith: *Duchess of Sutherland* v. *S.* [1893], 3 Ch. 169; 62 L. J. Ch. 946; *Re Cornwallis-West* [1919], 88 L. J. K. B. 1237. The S. L. Act trustees (or such of them not being the tenant for life) can now enforce covenants by the tenant for life and grant a lease to the tenant for life, and for that purpose may sign his name: S. L. Act, 1925, s. 68, removing the difficulties in *Boyce* v. *Edbrooke* [1903], 1 Ch. 836; 72 L. J. Ch. 547. A person cannot covenant with himself: *Ellis* v. *Kerr* [1910], 1 Ch. 529; 79 L. J. Ch. 291; *Napier* v. *Williams* [1911], 1 Ch. 361; 80 L. J. Ch. 298; but covenants entered into with himself and others can be enforced by the others: L. P. Act, 1925, s. 82.

Infants.

Leases during a minority will be made by the statutory owners or by a co-tenant for life of full age, or by trustees for sale, see last chapter, "Making of title on behalf of infants."

Dowress.

A dowress will become a tenant for life, when her dower is assigned or allotted by metes and bounds, as respects the land allotted for that purpose, and the letters of administration or probate (in the case of partial intestacy) of her husband will be the "settlement": S. L. Act, 1925, ss. 1 (3), 19.

As a rule, the dower will not be assigned, but the land will be retained by the personal representatives, who would grant the lease.

Where an infant is entitled, subject to dower, the dower takes effect as a family charge: *ib.*, s. 1 (3), and title would be made by the statutory owners: *ib.*, s. 26.

Save where the husband was a lunatic on the 1st January, 1926: Ad. of E. Act, 1925, s. 51 (2), dower cannot arise after 1925: *ib.*, s. 45; L. P. Act, 1922, 12th Sch., para. (1) (d); see Wills Act, 1837, s. 3; *Lacey* v. *Hill* (1875), L. R. 19 Eq. 346; *Re Thomas* (1886), 34 Ch. D. 166, which appear to show that there can be no unbarrable dower.

Curtesy.

A tenant, by the curtesy, will be a tenant for life: S. L. Act, 1925, s. 20, and a vesting instrument will be made in his favour; though the husband cannot take by the curtesy after 1925 on an intestacy affecting the fee simple: Ad. of E. Act, 1925, s. 45; L. P. Act, 1922, 12th Sch., para. (1) (d), he may still take in respect of an entailed interest: L. P. Act, 1925, s. 130, unless his wife (not having barred the entail) disposes of the property under *ib.*, s. 176.

Infant contingently entitled.

No tenant for life; statutory owners act.

The case of an infant contingently entitled (compare *Re Horne* (1888), 39 Ch. D. 84; 57 L. J. Ch. 790; *Re Sparrow's S. E.* [1892], 1 Ch. 412; 61 L. J. Ch. 260, for the old law) now comes within the category of cases where there is no tenant for life; accordingly S. L. Act, 1925, s. 23, applies, and the statutory owners will make title.

Married women.

A woman, whenever married, will exercise her powers under the S. L. Act, without her husband: *ib.*, s. 25; the vesting instrument will be made solely in her favour.

Capitalisation of royalties.

(*i*) As to the capitalisation of mining rents: S. L. Act, 1925, s. 47; see also called the Trustees, which expression, where the context admits, means the trustees from time to time of the settlement referred to in the subsisting vesting instrument affecting the premises hereby demised for the purposes of the Settled Land Act, 1925, as appearing from endorsements on the said instrument or from deeds of declaration), of the 2nd part, and the X. Company Limited, whose registered office is at —— (hereinafter called the Company, which expression, where the context admits, includes the persons deriving title under them), of the 3rd part : WHEREAS :—

Principal or vesting instrument.

(1) Under a Vesting Deed [Assent] dated, &c., and made between, &c., the mines, minerals and other properties hereinafter mentioned (with other properties) are now vested in the Lessor in fee simple [for the residue of a term of —— years from —— created by a Mining Lease dated, &c.] Upon the trusts upon which the same ought to be held under the settlement [created by the Will of ——] therein mentioned or otherwise : And as appears from the said Vesting Deed [Assent] [and from endorsements thereon] the Trustees are the present trustees of the settlement for the purposes of the Settled Land Act, 1925 : [*Mention any additional powers which may be material for the purposes of the lease*] :

Agreement to grant lease.

(2) The Lessor has agreed to grant such mining lease as is hereinafter contained :

NOW, in exercise of the powers for this purpose conferred by the Settled Land Act, 1925, and of all other powers and in consideration of the rents and royalties hereinafter reserved, and of the covenants herein contained, THIS DEED WITNESSETH, and it is hereby declared as follows : (*Continue as in Precedents of mining leases, infra*).

No. 5.

Lease to a tenant for life or to statutory owners.(j)

[*Heading as in Form No.* 1 *if the Lessor's title is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons from time to time entitled in

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ss. 41, 42, 45 and 46. A term of 100 years may be granted. This form assumes that the settlement does not negative the obligations imposed by s. 47. It may be that the tenant for life, as reversioner, has power, in the first instance, to give a receipt for the rents and royalties, though he would have to account for part to the trustees, but it is now more usual to express the trustees to be parties ; it is not necessary that they should execute.

Protection of lessees.

Save to the extent prescribed by *ib.*, s. 110, the lessees are not concerned with the settlement, nor with appointments of trustees thereof except so far as evidenced by endorsements on the vesting instrument and by deeds of declaration under *ib.*, s. 35.

Leases to tenants for life.

(*j*) No fine must be paid for the lease out of capital money, but the tenant reversion immediately expectant on the term hereby granted), of the one part, and T. L., of, &c. [and X. Y., of, &c.] (hereinafter called the Tenant[s], which expression, where the context admits, includes the persons from time to time entitled to the said term), of the other part (*continue as in Form No.* 1).

[*The following endorsement to be made on the Lease and signed by the tenant for life and S. L. Act trustees, or, if the S. L. Act trustees are the statutory owners, by them alone, pursuant to S. L. Act,* 1925, *ss.* 10 *and* 53.]

(*Date.*)

Subsidiary vesting deed.

1. By a Vesting Deed [Assent] dated, &c., and made between, &c., certain land at —— was vested [stated to be vested] in the within-named Tenant, to be held by him on the trusts upon which the same ought to be held from time to time under a settlement [created by the Will of ——, *or otherwise as the case requires*] therein referred to or otherwise; [and certain additional powers were therein set out or referred to].

2. The land demised by the within deed is to be held upon and subject to the same trusts and powers as the land comprised in the said Vesting Deed [Assent].

3. The —— (*naming the S. L. Act trustees*) are the trustees of the said settlement for the purposes of the Settled Land Act, 1925.

4. The within-named Tenant has power during his life to appoint new trustees of the settlement [*or otherwise as the case requires*].

No. 6.

By tenant for life of proceeds of sale of property, vested in trustees on trust for sale, with leave of Court.(*k*)

[*Heading as in Form No.* 1 *if the title is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. (*tenant for life of proceeds*) (hereinafter called the Attorney), of the 1st part, C. T., of, &c., and N. T., of, &c. (hereinafter called the Lessors, which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant upon the term hereby granted), of the 2nd part, and of C. D., &c. (hereinafter called the Tenant, which expression,

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for life may pay a fine out of his own money. The lease may contain an option to purchase the reversion: S. L. Act, 1925, s. 53. All leases of land to be made subject to a settlement must be granted or assigned to the tenant for life or statutory owner: *ib.*

As to S. L. Act trustees granting a lease of the settled land to the tenant for life for his own purposes: *ib.*, s. 69. This form is not applicable to that case.

Extent of order made before 1926, under S. L. Act, 1884, s. 7.

(*k*) This form only applies where the order is made before 1926, and so long as the order remains in force. Any powers given by the S. L. Acts, 1882 to 1890, which the tenant for life of the proceeds is authorised to exercise by the order may be exercised by him; the powers are not confined to those where the context admits, includes the persons deriving title under him), of the 3rd part : WHEREAS :—

(1) By an Order of the Chancery Division of the High Court of Justice, made on the —— day of ——, 19—, In the matter of certain hereditaments situated at —— (including the property hereinafter demised), settled by, &c. And In the matter of the Settled Land Acts, 1882 to 1890 (19— B. No. —), the Attorney was authorised to exercise the powers of leasing conferred by section sixty-three of the Settled Land Act, 1882 :(l)

(2) The Attorney, acting in the names and on behalf of the Lessors pursuant to sub-section (4) of section twenty-nine of the Law of Property Act, 1925, has agreed to grant such lease as is hereinafter contained :

NOW, in exercise of the powers conferred by the said Order and of all statutory powers and in consideration of the rent hereinafter reserved and of the covenants by the Tenant hereinafter contained, THIS DEED WITNESSETH as follows :—

1. THE Lessors hereby demise, &c. (*continue as in Form No.* 1).

No. 7.

The like where the trustees for sale have delegated their powers of leasing.(m)

[*Heading as in Form No.* 1 *if the title of the Lessors is registered.*] THIS LEASE [UNDERLEASE] made (*date*), BETWEEN (*parties as in last Form*) : WHEREAS :—

(1) By a Power of Attorney dated, &c., and made between the Lessors of the one part, and the Attorney of the other part, the Lessors pursuant to section twenty-nine of the Law of Property Act, 1925, delegated to the Attorney their powers, of and incidental to leasing, accepting surrenders of leases and management (whether conferred on them by that Act or otherwise)

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relating to leases and acceptance of surrenders : *Re Cecil* (1926), W. N. 138. But the leasing powers capable of being conferred by the order are not nearly so wide as those given to the trustees for sale by L. P. Act, 1925, s. 28, which can be delegated by them under s. 29 to the tenant for life. The powers formerly exercisable under the Acts of 1882 to 1890 are now conferred by the S. L. Act, 1925 ; references in the order to the old powers are construed as referring to the corresponding enactment in the S. L. Act, 1925, see that Act, s. 119 (1) (c). Under L. P. Act, 1925, s. 8 (1), the statutory attorney cannot impose a personal liability on his principals (the trustees for sale) except that the usual qualified covenant for enjoyment may be given in their names. He will sign their names when executing the lease.

References to statutory powers which have been repealed.

Power to bind principals limited.

(l) This refers to an Order made before 1926 under S. L. Act, 1884, s. 7.

(m) See note to last form. The lessee is entitled to a copy of the material parts of the power of attorney : L. P. Act, 1925, s. 125, as amended by L. P. (Amend.) Act, 1926, Sch. It should (unless it is to be handed over to the lessee) be filed at the Central Office, or if it affects registered land, at the Land Registry : *ib.* It need not be under seal : L. P. Act, 1925, s. 29. If the trustees refuse to delegate they can be compelled to do so : *ib.*, s. 30. The attorney will sign the names of the trustees.

Filing of powers of attorney.

Delegation.

until the sale of the land therein referred to (which included the land hereinafter demised), but subject to a power of revocation which has not been exercised :

(2) The Attorney, acting in the names and on behalf of the Lessors pursuant to sub-section (2) of the said section, has agreed to grant such lease as is hereinafter contained :

NOW, in exercise of the powers for this purpose conferred by the Law of Property Act, 1925, and of all other powers and in consideration of the rent hereinafter reserved and of the Tenant's covenants hereinafter contained, THIS DEED WITNESSETH, and it is hereby declared as follows :—

1. THE Lessors hereby demise, &c. (*continue as in Form No.* 1).

No. 8.

By married woman of her separate property.

[*Heading as in Form No.* 1 *if the Wife's title is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN E. B. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under her), the Wife of A. B., of, &c., to whom she was married on the —— day of ——, 1883, (*n*) of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part : WITNESSETH, &c. (*continue as in Form No.* 1).

No. 9.

Where a husband is seised in right of his wife.(*o*)

[*Heading as in Form No.* 1 *where the Lessor's title is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c., and C. B., his wife (hereinafter called the Lessors, which expression, where the context admits, includes the persons from time to time entitled in reversion expectant on the term hereby granted), of the one part, and R. T., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part :

Separate property.

Legal estate got in.

(*n*) This date is inserted to show that the marriage took place after the commencement of the M. W. P. Act, 1882. If the lessor was married before 1883, but the property was acquired in 1883 or after, the reference to the date of the marriage should be omitted, and a statement can be substituted thus "being entitled to the premises hereby demised as her separate property." Such a statement is also available where the Act does not apply, but the property was limited to her for her separate use. *Semble*, any legal estate outstanding in a trustee for her would be got in by L. P. Act, 1925, 1st Sch., Pt. II.

Settled land.

Trust estates.

A married woman entitled to settled land grants a lease in the same way as a man: S. L. Act, 1925, s. 25 ; she is in the same position as a man in regard to trust estates : L. P. Act, 1925, s. 170.

Woman married and acquiring property before 1883.

(*o*) The husband and wife being married, and the property being acquired before 1883, there being no trust for her separate use, they are both seised in her right. There is no joint tenancy, hence there is no trust for sale ; though he has an equitable interest for the joint lives, this arises by operation

WITNESSETH, in consideration of the rent hereinafter reserved and of the covenants by the Tenant hereinafter contained, as follows :—

1. THE Lessors do and each of them doth hereby demise, &c. (*continue as in Form No.* 1).

No. 10.

By trustees for sale, whether or not the trustees are beneficially entitled.

[*Heading as in Form No.* 1 *if the title of the Lessors is registered.*]

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN C. T., of, &c., and N. T., of, &c. (hereinafter called the Lessors, which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant on the term hereby granted), of the one part, and R. S., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part : (*Continue as in Form No.* 1, *the trustees have the statutory powers of a tenant for life : L. P. Act,* 1925, *s.* 28, *but it is unnecessary to refer to statutory or other powers in a lease :*

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of law, and there is no settlement ; there is no succession for both are seised ; he is not a tenant for the life of "another," hence the land is not "settled land" ; see note in Vol. I, p. 622. The lease need not be acknowledged : L. P. Act, 1925, s. 167.

Family charge.

It is assumed that there is no family charge affecting the land to bring the case within S. L. Act, 1925, s. 1 (1) (v) ; if there were the husband and wife could make title subject thereto under L. P. (Amend.) Act, 1926, s. 1.

Leases under express powers in a deed or Will.

In the 21st ed., a form was given of a lease made under an express power contained in a deed or Will. Such powers will, after 1925, usually be exercisable by the tenant for life or statutory owners : S. L. Act, 1925, ss. 108 and 109 ; *Re Cowley* (1926), W. N. 202 ; or by trustees for sale : L. P. Act, 1925, s. 28 (as amended). Effect will be given by the estate owner to the exercise of equitable powers so far as they are not transferred to him : S. L. Act, 1925, s. 16 ; L. P. Act, 1925, s. 3. The intending lessee will look to the estate owner to give legal effect to a contract for a lease made under an equitable power, the contract will not come on the title : L. P. Act, 1925, s. 45 (9).

Wills and trust instruments taking effect after 1925.

Any power of leasing conferred by a Will which is in excess of the statutory powers (an unlikely event) should be mentioned as an additional power in the vesting assent or assent on trust for sale ; the Will does not come on the title. Similarly, where the power is given by deed, the trust instrument conferring the power does not come on the title.

Powers given to charity trustees.

If an additional power is given to charity trustees by a Will, this will be mentioned in the assent : S. L. Act, 1925, s. 29 (1). If, however, the charity is not constituted by Will, the instrument creating the charitable trust does come on the title : *ib.*, but in a lease it will not usually be necessary to refer to the instrument, see Form 13A.

Trustees of deeds of arrangement with creditors.

Trustees under a deed of arrangement with creditors usually hold on trust for sale, and as such trustees have the powers conferred by L. P. Act, 1925, s. 28. A sole trustee can act for this purpose or as a trustee in bankruptcy : L. P. (Amend.) Act, 1926, s. 3. In the unusual case of the trustee not holding on trust for sale, the powers in the deed of arrangement would be material to show how far he, as estate owner, has power to make leases, &c., which will be valid against all persons affected.

ib., *s.* 152 (6). "*Trustees for sale*" *means persons holding on trust for sale, not trustees with a power of sale: ib., s.* 205 (1) (xxix). *Additional powers are given to trustees for sale, though they may also be beneficial owners, in order that, when the beneficial interests in the proceeds of sale are varied, the trustees can carry out special transactions without obtaining an extension of their powers from the beneficiaries, or to prevent a transaction being held up if all the beneficiaries are not sui juris*).

No. 11.

By personal representatives.

[*The form is the same as Form No.* 10. *Notice of the lease or underlease must be endorsed on the probate or letters of administration: Ad. of E. Act,* 1925, *s.* 36. *Personal representatives have the same powers as trustees for sale: ib., s.* 39, *for purposes of administration or during a minority, or the subsistence of a life interest, or until the period of distribution arrives: ib., as well as other powers: ib., s.* 1. *They may also act as statutory owners under S. L. Act,* 1925, *s.* 26, *and may become S. L. Act trustees under ib., s.* 30 (3). *If the term they create does not exceed three years they may create a tenancy in writing under hand only, containing an agreement by the lessee to pay the rent: ib., s.* 42 (5) (ii).]

No. 12.

By a lunatic by his committee or receiver.

[*Heading as in Form No.* 1 *if the Lessor's title is registered.*]
THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), acting by X. Y., of, &c. (hereinafter called the [Committee] Receiver), pursuant to an Order dated ——, and made under the Act, 53 Vict. c. 5, and amending Acts in the matter of the Lessor,(*p*) of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, when the context admits, includes the persons deriving title under him), of the other part: WITNESSETH, in pursuance of the said Order and in consideration of the rent hereinafter reserved and of the Tenant's covenants herein contained, as follows:—

1. THE Lessor (acting by the [Committee] Receiver) hereby

Leases by lunatics.

(*p*) See Lunacy Acts, 1890, s. 120; 1908, s. 1. The application of these sections is extended to mental deficients: Mental Deficiency Act, 1913, s. 64; the expression "Defective" in L. P. Act, 1925 (see s. 205), and in S. L. Act, 1925 (see s. 117), includes mental deficients. In every case the receiver or committee when creating or transferring a legal estate must use the name of the lunatic or defective: L. P. Act, 1925, s. 22; he will *not* sign his own name. The settlement should not be recited, the vesting instrument is what is material to the lessee; the vesting instrument will contain a reference to the settlement.

demises, &c. (*continue as in Form No.* 1, *and see L. P. Act*, 1925, *s.* 22, *as to using the name of the lunatic*).

[*Heading as in Form No.* 1 *if the Lessor's title is registered.*]

No. 13.

By a lunatic tenant for life under S. L. Act.(*q*)

THIS LEASE [UNDERLEASE] made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons from time to time entitled to the reversion immediately expectant upon the term hereby granted), acting pursuant to the orders hereinafter mentioned, by X. Y., of, &c. (hereinafter called the [Committee] Receiver), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part: WHEREAS:—

(1) UNDER a Vesting Deed [Assent] dated, &c., and made, &c., the property hereinafter demised (with other property) was vested [stated to be vested] in the Lessor, Upon the trusts which under a settlement therein referred to or otherwise the same ought to be held from time to time: And —— (*stating the names of the S. L. Act trustees*), were stated to be trustees of the settlement for the purposes of the Settled Land Act, 1925: [And the following additional powers relating to leases were therein set forth or mentioned, namely (*set out any power which affects the lease to be granted*):]

(2) [*Recite the general order* "dated ——, made under the Act, 53 Vict. c. 5, and the Amending Acts in the matter of the Lessor," *appointing the Committee or Receiver. Under S. L. Act,* 1925, *s.* 28, *an order may be made either generally or in a specific instance, without requiring the estate of the lunatic to be administered in lunacy, and a receiver may be appointed solely in relation to the settled land or in relation to a particular settlement; if no general receiver has been appointed this and the next recital must be varied.*]

(3) By an Order dated ——, In the matter of the Lessor, And in the matter of the Settled Land Act, 1925, it was ordered that the Receiver [Committee] might exercise in the name and on behalf of the Lessor the powers of a tenant for life in relation to the settlement referred to in the said Vesting Deed [Assent]: NOW, in consideration of the rent hereinafter reserved and of the covenants by the Tenant herein contained, and in exercise of the powers for this purpose conferred by the Settled Land Act,

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(*q*) Without the order the receiver or committee cannot give proper notice as required by S. L. Act, 1925, s. 101: *Re Ray* (1884), 25 Ch. D. 464; 53 L. J. Ch. 205.

1925, and of all other powers, THIS DEED WITNESSETH as follows :—

1. The Lessor, acting by the Receiver [Committee], hereby demises, &c. (*continue as in Form No.* 1).(*r*)

No. 13a.

Lease by managing trustees of a charity.

[*Heading as in Form No.* 1 *if the Lessor's title in registered.*]

THIS LEASE [UNDERLEASE] made (*date*), Between —— [*giving the names and addresses of all the managing trustees of the Charity, though it may not be necessary that all should execute, see S. L. Act,* 1925, *s.* 29 (5)], the managing trustees of the —— Charity (hereinafter called the Lessors, which expression, where the context admits, includes the persons from time to time entitled in reversion expectant on the term hereby granted) of the one [1st] part [*add the Official Trustee of Charity Lands as a party only if the legal estate is vested in him, he will not execute : ib., s.* 29 (5); (hereinafter called the Official Trustee) of the 2nd part], and R. T., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other [3rd] part :

WITNESSETH [pursuant to an Order made on (*date*), by the Charity Commissioners for England and Wales *or otherwise as the case requires ; in many cases no order will be required : ib., s.* 29 (2) ; *Chap.* V, *pp.* 879–80, *supra ;* and] in consideration of the rent hereinafter reserved and of the covenants by the Tenant herein contained and in exercise (*s*) of the powers for this purpose conferred by section twenty-nine of the Settled Land Act, 1925, and of all other powers as follows :—

1. The Lessors hereby demise [and the Official Trustee acting by the Lessors hereby demises and confirms] unto the Tenant (*continue as in Form No.* 1).

Master in Lunacy jurisdiction.

(*r*) S. L. Act, 1925, s. 22 ; the receiver should sign the name of the lunatic when executing. The Lunacy Act, 1891, s. 27 (1), provides that (subject to rules) the Master may exercise the jurisdiction of the Judge in Lunacy as regards administration and management. Under the Rules in Lunacy, 1893, r. 10 (1893, W. N., Orders and Rules, p. 3), the Master must settle the lease and the receiver execute it upon the lessee executing a counterpart. As to the receiver of a person "not so found," see Lunacy Act, 1908, s. 1 ; Mental Deficiency Act, 1913, s. 64. There is only one Master in Lunacy : Lunacy Act, 1922, s. 1 ; with an Assistant Master. As to criminal lunatics : *ib.*, s. 2.

Leases generally.

(*s*) As to S. L. Act, 1925, s. 29, see 2 Wolst. & Cherry, 11th ed. The lease will not be aided if defective : L. P. Act, 1925, s. 152 (7).

As to what other leases can be granted, see last chapter, and as to making title in special cases, compare "Conveyances on Sale," in Vol. I.

SECTION II.

DEMISES AND RESERVATIONS OF EASEMENTS.

No. 14.

Right to use road.

(*To follow parcels, see Forms, Sect.* II, *Purchase Deeds, Vol.* I, *pp.* 471, *et seq.*) TOGETHER with the right (in common with the Lessor and all other persons having a similar right) to pass and repass, with or without horses, cattle and other animals, carriages, carts, motors and other vehicles, over and along the road, &c. (*describing it*), the Tenant paying a proper proportion of the expense of keeping the same in repair until it shall be declared a highway repairable by the inhabitants at large, the amount to be from time to time determined in case of difference by the surveyor of the —— District Council or by a surveyor to be appointed by him for that purpose.

No. 15.

To use ornamental ground.

(*To follow parcels.*) TOGETHER with the right to use, in common with all other persons entitled to use the same, the ornamental garden (*t*) (*describing it*), subject to such reasonable rules and regulations as may from time to time be prescribed by the Lessor.

No. 16.

Right to use combined drain in common with occupiers of adjoining premises.

(*To follow parcels.*) TOGETHER with the right to use, in common with the occupiers of the adjoining premises, the combined drain running partly under the premises hereby demised and partly under the adjoining premises, it being intended that the said combined drain shall continue to be used as heretofore for the drainage of all the premises, the Tenant keeping the Lessor indemnified against any expenses which may become payable in respect of the premises hereby demised under section nineteen of the Public Health Act, 1890.(*u*)

No. 17.

Right to access of light and air.(*v*)

(*To follow parcels.*) TOGETHER with the right to the unrestricted access of light and air to the windows and openings of the property hereby demised over the adjoining land of the Lessor.

Easements.

(*t*) See Town Gardens Protection Act, 1863; *Keith* v. *Twentieth Century Club* [1904], 73 L. J. Ch. 545. Though undivided shares in land cannot be created, this does not apply to easements, &c., to be held in common: L. P. Act, 1925, s. 187.

Combined drains.

(*u*) As to whether the drain is vested in or repairable by the occupier or the local authority: *Pemsel* v. *Tucker* [1907], 2 Ch. 191; 76 L. J. Ch. 621; *Wood Green Urban D. Council* v. *Joseph* [1908], A. C. 419; 77 L. J. K. B. 924; *Hull Corporation* v. *N. E. Ry.* [1916], 1 Ch. 31; 84 L. J. Ch. 905.

Access of air.

(*v*) Unless the lease is for a special purpose for which free access of air is necessary, or the air comes through special apertures, the lessee has no right to access of air without a specific grant: *Aldin* v. *Latimer* [1894], 2 Ch. 437;

No. 17A.

Reservation of right to build on adjoining land.

EXCEPT AND RESERVED unto the Lessor full and free right to build upon or otherwise use the land belonging to the Lessor and adjoining the property hereby demised, notwithstanding that such buildings or user may affect the light and air coming to the property hereby demised.(*w*)

No. 18.

Reservation of free passage of water and soil.

EXCEPT AND RESERVING unto the Lessor and his lessees and tenants of the adjoining property the free passage of water and soil through the drains and watercourses in or under the premises hereby demised as the same has been heretofore used and enjoyed.

SECTION III.

ADDITIONAL RENTS.

No. 19.

Further rent for use of ornamental ground.

ALSO YIELDING AND PAYING the further yearly rent of £—— in respect of the use by the Tenant (in common with other persons entitled to the like right) of the ornamental ground hereinbefore mentioned, such rent to be paid on the quarter days aforesaid.

No. 20.

Further rent equal to interest on money expended by Lessor in improvements.

ALSO YIELDING AND PAYING by way of further rent an annual sum equal to interest at the rate of £— per cent. per annum on all such money (if any) as the Lessor shall, at the request in writing of the Tenant, expend in permanent improvements on the property, the further rent to commence from the day on which each sum shall be expended, and to be thenceforth payable on the quarter days aforesaid during the residue of the said term.

No. 20A.

Further rent equal to fire insurance premiums.

ALSO YIELDING AND PAYING by way of further rent such sums as the Lessor[s] may from time to time expend in discharging the premiums payable in respect of fire insurance policies from time to time effected by the Lessor[s] in respect of the buildings hereby demised, such sums to be paid on the quarter day aforesaid which occurs next after the expenditure.

Reservations.

63 L. J. Ch. 601 *Chastey* v. *Ackland* [1895], 2 Ch. 396; [1897], A. C. 155; 64 L. J. Q. B. 523; 66 *ib.* 518; *Betts, Ltd.* v. *Pickfords* [1906], 2 Ch. 87; 75 L. J. Ch. 483. As a rule, it is necessary to reserve a right to the lessor to build on adjoining land. No such reservation is implied: *Cable* v. *Bryant* [1908], 1 Ch. 259; 77 L. J. Ch. 78 *Westwood* v. *Heywood* [1921], 2 Ch. 130; 90 L. J. Ch. 515; as to reservations: L. P. Act, 1925, s. 65.

(*w*) See *Haynes* v. *King* [1893], 3 Ch. 439; 63 L. J. Ch. 21; *White* v. *Harrow* (1902), 86 L. T. 4 *Davis* v. *Town Properties, &c., Corpn.* [1903], 1 Ch. 797; 72 L. J. Ch. 389; *Betts, Ltd.* v. *Pickfords, supra*; *Harmer* v. *Jumbil Tin Areas* [1921], 1 Ch. 200; 90 L. J. Ch. 140.

SECTION IV.

PRELIMINARY NOTE ON COVENANTS.

The general statute law relating to covenants, see 1 Wolst. & Cherry, 11th ed., 250–71, will be found together in ss. 76 to 84 of the Law of Property Act, 1925.

The following points should be borne in mind in relation to covenants in leases made after 1925:—

No statutory covenants.

(1) The statutory covenants for title and indemnity are not implied in a lease at a rent: ss. 76 (5), 77 (3).

Rights of covenantee.

(2) A covenant relating to the land of the covenantee is deemed to have been made with him and his successors in title and the persons deriving title under him or them: s. 78. This merely affects the form of the requisite covenant.

Obligations of covenantor.

(3) A covenant relating to land of a covenantor or capable of being bound by him is deemed to have been made on behalf of himself and his successors in title, &c.: s. 79. This again simplifies the form.

Things not *in esse*.

The section, however, applies to a covenant to do something, though the subject-matter is not in existence. This is new law.

Covenants running with the land.

The covenants bind the real and personal estate of the covenantor: s. 80. This is old law. And covenants running with the land are explained and moulded: *ib.*

Covenants with two or more.

(4) Covenants with two or more persons jointly enure for the benefit of the survivors: s. 81. This is old law. But they are also construed as *also* being made with *each* of them: *ib.* This will shorten the form.

With self and others.

(5) A covenant with self and others is now enforceable by the others: s. 82. This is retrospective.

Discharge or modification of restrictive covenants.

(6) Restrictive covenants can be modified or discharged under s. 84.

As regards leaseholds this only applies where a term of more than seventy years was created and then only after fifty years have expired; it does not apply to mining leases: s. 84 (12).

COVENANTS.

No. 21.

Covenant to pay rent, rates and taxes, &c.,

(1) To pay the rent hereby reserved at the times and in manner aforesaid:

(2) To pay and discharge (in addition to the rent) all rates, taxes, duties and assessments (*x*) (other than [land tax] tithe

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"Assessments."

(*x*) This extends to increased assessments imposed after the date of the lease: *Salaman* v. *Holford* [1909], 2 Ch. 602; 79 L. J. Ch. 41. This liability may, if necessary, be restricted by the words in brackets. If the words in square brackets at the end of this clause are not used the tenant will be liable to pay for works done by or under the authority of the local authority under the Public Health Acts, *e.g.*, in respect of a new drain where the existing one is defective: *Farlow* v. *Stevenson* [1900], 1 Ch. 128; 69 L. J. Ch. 106 (a case under the Metropolis Management Acts). *Cf. Howe* v. *Botwood* [1913], 2 K. B. 387; 82 L. J. K. B. 569; *Henman* v. *Berliner* [1918], 2 K. B. 236; 87 L. J. K. B. 984. As the lessee can protect himself against risk of this kind by examining the drains before he takes the lease, it is probable that the covenant is in this respect in accordance with the intention of the parties. But there are cases in which a lessee who has entered into this covenant may find himself involved in more serious liabilities. If, for instance, the house is in a district governed by the but not expenses of work done by local authority and payable by owner.

rentcharge and landlords property tax (*y*)), but including (except as expressly provided) all charges whatsoever, whether parliamentary, parochial, or of any other description, which now are or during the said term shall be imposed or charged on the premises [or the landlord or tenant in respect thereof] [but not expenses which the Lessor may become liable to pay for paving, sewering, sanitary or other works done by or under the order of the local authority under any statutory provision for that purpose and which would, in the absence of any agreement to the contrary, be payable, as between the owner and the occupier, by the owner.]

Metropolis Management Acts or by some local Act containing similar provisions, and the adjoining street has not hitherto been sufficiently paved, the local authority may pave it throughout the whole breadth of the carriage-way and footpaths, and charge the expense to the owners of the premises abutting thereon. Again, if the house abuts on a private road, *i.e.*, one not yet declared a highway repairable by the inhabitants at large, the local authority may, under a Private Street Works Act, 1892, sewer, pave, metal, flag, channel, and make good the same, and apportion the expense on the premises abutting thereon. In either of the above cases the proportion of expenses chargeable to the particular house would have to be borne by the lessee under the usual covenant, see *Greaves* v. *Whitmarsh* [1906], 2 K. B. 340; 75 L. J. K. B. 633, and cases there cited. This seems unreasonable where the lease does not exceed twenty-one years. It would be a more equitable arrangement that the lessee should pay interest only on the sum expended. An assessment paid by the lessor before the lease which the lessor continues to pay after the lease can be recovered by him from the lessee: *Eastwood* v. *McNab* [1914], 2 K. B. 361; 83 L. J. K. B. 941. If preferred the following clause may be used instead of that in square brackets:—" And except also that if any paving or other street works shall, during the said term, be done by the local authority in the said street or road called ——, the expense whereof shall, under any Act of Parliament authorising the same, be recoverable from the owners of the premises abutting on or adjoining the said street or road, then and in every such case the proportion of expenses payable in respect of the premises hereby demised shall be paid by the Lessor, and the Tenant will, during the remainder of the term, pay to the Lessor interest on the amount so paid by him at the rate of £— per cent. per annum from the time of the payment thereof, such interest to be payable on the quarter days aforesaid and to be considered as additional rent and recoverable accordingly."

Except also expenses incurred in street works, which are to be paid by lessor, and lessee to pay interest on amount so expended.

Income tax.

Deduction from rent.

(*y*) By the Income Tax Act, 1918, Sched. A, No. VIII, r. 1, a tenant who pays landlords property tax may deduct the amount of the tax from his next payment of rent, but if he omits to do so has no right to deduct it subsequently: *Hill* v. *Kirshenstein* [1920], 3 K. B. 556. The tax may be deducted from rent

No. 22.

Covenant to insure against fire.(z)

To insure and keep insured at all times during the said term all buildings and works now or at any time hereafter built on the demised land against loss or damage by fire [in the joint names of the Lessor and the Tenant] in the —— insurance office [or with the —— underwriters] or in [with] some other well-established office [or underwriters] as the Lessor shall approve in the sum of £—— at least [in a sum equal to the full value thereof] and to pay all premiums necessary for that purpose within seven days after the same shall become due and whenever required to produce to the Lessor the policy of such insurance and the receipt for the last premium for every such insurance and in case of damage or destruction by fire to forthwith lay out the insurance money in rebuilding or making good the damage :

PROVIDED as follows—

(i) If the said money shall be insufficient to repair or make good the whole loss or damage the Tenant shall expend any further money required in rebuilding and reinstating the buildings or works so destroyed or damaged in accordance with the original plans and elevations thereof, subject to such variations (if any) as may be agreed :

(ii) If any of the buildings and works shall not be kept insured as aforesaid the Lessor may insure the same and pay the premiums

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in arrear when it is paid : *Re Sturmey Motors Ltd.* [1913], 1 Ch. 16 ; *Kirk* v. *Cunnington* [1921], 3 K. B. 637. Where the annual value of the demised premises exceeds the rent reserved, the tenant can only deduct so much of the tax as is attributable to the rent reserved : *Moore* v. *Drughorn* [1922], 2 K. B. 492 ; 91 L. J. K. B. 796 ; aff. (1923), W. N. 305. The tax must be actually paid before it can be deducted : *Barnes* v. *Kyffin* (1916), W. N. 166 ; but no evidence of payment need be produced to the lessor : *North London and Gen. Property Co.* v. *Moy* [1918], 2 K. B. 439 ; 87 L. J. K. B. 986. A tenant who has paid tax in respect of a previous tenancy can deduct the amount of the tax from his rent : Inc. T. Act, 1918, Sch. A, No. VIII, r. 7 ; *Re Hayman* [1917], 1 Ch. 545. The right to deduct tax is not affected by the reduction of rent provided by the Licensing Consolidation Act, 1910, s. 21.

Inhabited house duty.

Inhabited house duty has been abolished : Fin. Act, 1924.

Tithe rentcharge does not include a tithe rate payable in the City of London, such a rate must be paid by the tenant : *Re Salter and Awdry* [1921], 2 Ch. 141 ; 90 L. J. Ch. 459.

Fire insurance.

(z) As to the construction of covenants to insure and as to the extent of the liability of the tenant to make good any deficiency out of his own money in the absence of express stipulation : *Enlayde* v. *Roberts* [1917], 1 Ch. 109 ; 86 L. J. Ch. 149 ; where a tenant is bound by contract to insure with a special company or a special class of company he is only bound to effect the usual policy issued by that company or class of company : *Upjohn* v. *Hitchins* [1918], 2 K. B. 48 ; 87 L. J. K. B. 1205.

and the amounts thereof shall be repaid by the Tenant and in the meantime shall be a charge on the premises and be recoverable by distress as for rent in arrear.

No. 23.

Not to assign or sub-let.(*a*)

Not to assign or underlet or part with possession of the premises or any part thereof [nor remove the said furniture and effects and fixtures or any of them from the premises] without the written consent of the Lessor (previously obtained), but such consent shall not be unreasonably withheld.

No. 24.

To keep premises in repair and deliver up in repair.

At all times during the said term to keep the premises [all buildings to be erected on the demised land] (including all fixtures (*b*) and additions thereto) in good and substantial repair and condition and deliver up the same in such good and substantial repair and condition to the Lessor at the expiration or sooner determination of the said term.

No. 25.

Covenant by the Lessor for quiet enjoyment.

The Lessor hereby covenants with the Tenant that the Tenant paying the rent hereby reserved and observing and performing the covenants and conditions herein contained, and on the part of the Tenant to be observed and performed, shall and may peaceably and quietly possess and enjoy the premises hereby demised during the said term without any interruption from or by the Lessor (meaning the Lessor personally) (*c*) or any person rightfully claiming from or under him.

No. 26.

To execute sanitary works if required by local authority.

At his own cost to execute all such sanitary and other works (if any) as the local authority may from time to time lawfully require to be executed, whether by the owner or occupier, upon or in respect of the premises, in order to abate a

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Consents to assignments, &c.

(*a*) The consent must be obtained in every case of actual assignment or sub-letting: *Barrow* v. *Isaacs* [1891], 1 Q. B. 417; 60 L. J. Q. B. 179; *Eastern Telegraph Co.* v. *Dent* [1899], 1 Q. B. 835; 68 L. J. Q. B. 564, but no fine can be exacted for the licence unless such a provision is specially made in the deed: L. P. Act, 1925, s. 144. Such a covenant runs with the land: *Re Stephenson* [1915], 1 Ch. 802; 84 L. J. Ch. 563. The covenant, however, does not apply where the assignment is only equitable: *Gentle* v. *Faulkner* [1900], 2 Q. B. 267; 69 L. J. Q. B. 777. If the words "or any part thereof" are omitted, an assignment of part of the premises will not be a breach of the covenant: *Grove* v. *Portal* [1902], 1 Ch. 727; 71 L. J. Ch. 299.

"or any part thereof."

An underlessee is not an "assign": *South of England Dairies* v. *Baker* [1906], 2 Ch. 631; 76 L. J. Ch. 78.

As to the position of an underlessee, whose lease was granted in breach of covenant, where the lessee surrenders, see *Parker* v. *Jones* [1910], 2 K. B. 32; 79 L. J. K. B. 921.

(*b*) See *Leschalles* v. *Woolf* [1908], 1 Ch. 641; 77 L. J. Ch. 345.

(*c*) A tenant for life, having regard to the definition "lessor," should not be made liable for the acts of a remainderman. After 1925, however, settled land will pass to the representatives of a tenant for life, he being a trustee thereof, and they will assent to its passing to the person next entitled.

nuisance, or for any other purpose under any statutory provision in that behalf.(*d*)

No. 27.

Not to interfere with air or light to adjoining premises.

NOT at any time to erect or put up any building or fence on the demised premises which will interfere with the free access of light and air to the windows of the adjoining premises.

No. 28.

To permit notice board to be affixed before end of term.

To permit the Lessor or his agent, at any time within three months before the expiration or sooner determination of the said term, to enter into and upon the premises for the purpose of affixing upon a suitable part thereof a notice board for letting or selling the same, and not to remove or interfere with such notice board, and to permit all persons, by order of the Lessor or his agent, to view the premises at all reasonable times of the day.

No. 29.

Covenant by Lessor to build garage and by Lessee to pay interest on outlay.

(i) THE Lessor hereby covenants with the Tenant forthwith to proceed to build, and before the —— day of —— next to complete, a garage and (*or stables, coach-house and harness room or a conservatory or greenhouse, or as the case may be*), in the situation and according to the plans which have been agreed to by the Lessor and Tenant and signed by them, with all proper fixtures and fittings thereto :

(ii) THE Tenant hereby covenants with the Lessor to pay to the Lessor as from the completion of the said buildings and works, and during the remainder of the said term, an additional rent equal to interest at the rate of £—— per cent. per annum on the amount which shall be expended by the Lessor in the erection of the said buildings and works, pursuant to the foregoing covenant, such additional rent to be paid on the quarter days aforesaid and to be recoverable in like manner as the rent hereinbefore reserved.

No. 30.

Covenant by surety for payment of rent and observance of Lessee's covenants.

INASMUCH as upon the treaty for this Lease it was agreed that the Surety should enter into the covenant[s] hereinafter contained : Now the Surety hereby covenants with the Lessor that the Tenant shall and will at all times during the continuance of this Lease pay the rent hereby reserved, and observe and perform the covenants herein contained and on the part of the Tenant to be observed and performed ; and that if the Tenant shall make default in payment of the said rent or any part thereof at the time hereby fixed for payment thereof, or in observing and performing the said covenants or any of them, then and in every such case the Surety, or his personal representatives, will pay the rent or observe and perform any covenant in respect whereof the Tenant shall be in default as aforesaid :

(*d*) See *Monro* v. *Burghclere* [1918], 1 K. B. 291 ; 89 L. J. K. B. 366.

PROVIDED that, notwithstanding the forbearance by the Lessor to enforce against the Tenant the payment of the said rent or the observance or performance of the Tenant's covenants, or the giving of any time by the Lessor to the Tenant in relation thereto, the Surety or his estate or effects shall not thereby be discharged from liability under the foregoing covenant.(*e*)

(*Add next Form, if desired.*)

No. 31.

Covenant by Surety in case of disclaimer by Lessee's trustee in bankruptcy to accept new lease on terms of old one.(*f*)

THE Surety hereby covenants with the Lessor that if the Tenant shall become bankrupt, and his trustee in bankruptcy shall disclaim this Lease, and if the Lessor shall within three months after such disclaimer, by notice in writing, require the Surety, or his personal representatives, to accept a lease of the premises for a term commensurate with the residue which, if there had been no disclaimer, would have remained of the term granted by this Lease, at the same rent and under the like covenants and conditions as are reserved by and contained in this Lease (the said new Lease and the rights and liabilities thereunder to take effect as from the date of the said disclaimer), then and in such case the Surety, or his personal representatives, shall accept such Lease accordingly and execute a counterpart thereof.

No. 32.

Option for Lessee on giving notice

PROVIDED,(*g*) that if the Tenant shall be desirous of purchasing the reversion in fee simple in the premises hereby demised [*or* the unexpired residue of the term of years granted in the premises

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(*e*) If it is intended to limit the amount of the guarantee, add :—

PROVIDED ALSO, that the total amount recoverable from the Surety, or his estate and effects, under the foregoing covenant shall not exceed the principal sum of £—— (*or* a yearly sum of £——).

Effect of disclaimer by trustee in bankruptcy.

(*f*) The previous covenant will have come to an end by the disclaimer of the lessee's trustee in bankruptcy: *Stacey* v. *Hill* [1901], 1 Q. B. 660; 70 L. J. K. B. 435. The further covenant will virtually continue the surety's liability, unless the lessor prefers to resume possession himself or to relet the property to another person.

Liability of original lessee.

A simpler mode of giving effect to the intention of the parties would be for the lessor to grant the lease in the first instance to the intended surety and for the latter to assign it to the intended lessee. By this means the surety, as the original lessee, would remain liable notwithstanding the disclaimer (*Hill* v. *E. & W. I. Dock Co.* (1884), 9 A. C. 448), and would be entitled to apply for an order vesting in him the bankrupt's interest.

Only where a perpetually renewable lease has been converted into a long term is the original lessee placed in the position of an assignee: L. P. Act, 1922, 15th Sch., para. 11.

In option to purchase, payment of money

(*g*) An estate contract can be registered in respect of the option under L. C. Act, 1925, s. 10, Class C. (iv). According to the Form here given, the giving of the notice by the lessee to the lessor will constitute the relation of to purchase reversion in fee simple, or superior leasehold interest.

by the Head Lease dated, &c., subject to the rent and lessee's covenants reserved by and contained in the said Head Lease], at the price of £——, and shall at any time before the —— day of ——, 19— (*h*), give to the Lessor a notice in writing to that effect, then and in such case the person giving such notice shall be the purchaser of the said reversion [*or* of the unexpired residue of the said term subject as aforesaid] at the price of £——, as from the date of such notice subject to the following conditions (namely) :—(*i*)

Time for completion.

(1) THE purchase-money shall be paid and the purchase shall be completed on such one of the quarter days hereby fixed for payment of rent as shall happen next after the expiration of three months from the date of such notice, and if the said purchase shall not be completed on that day, the Purchaser shall pay to the Vendor interest on the said purchase-money at the rate of £— per cent. per annum, from that day up to the actual completion of the purchase :

Arrears of rent to be paid up to completion.

(2) THE Purchaser shall pay all arrears of rent up to the

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to Lessor sometimes made a condition precedent.

vendor and purchaser between them, so as to entitle each party to specific performance of the contract for sale. Sometimes the clause is so worded as to make the payment of the money a condition precedent to the right of purchase. Thus, in *Lord Ranelagh* v. *Melton* (1865), 2 Dr. & Sm. 278 ; 34 L. J. Ch. 227, the lease provided that if the lessee should desire to purchase the fee simple, and should give three months' notice of such desire, and at the expiration of such notice should pay the purchase-money, then the lessor would convey the property to the lessee, and it was held that the money must be paid on the precise day on which the notice expired, and that until the condition was thus performed the relation of vendor and purchaser did not arise on either side ; see also *Weston* v. *Collins* (1865), 34 L. J. Ch. 353.

Option to purchase (tenant holding over).

An option to purchase the reversion is not one of the terms of the tenancy which would be incorporated into a yearly tenancy created by the tenant holding over : *Re Leeds & Batley Breweries* [1920], 2 Ch. 548 ; 89 L. J. Ch. 645 ; and see *Batchelor* v. *Murphy* [1926], A. C. 63 ; 95 L. J. Ch. 89 ; and *Sherwood* v. *Tucker* [1924], 2 Ch. 440.

An unlimited option to purchase the reversion is void.

(*h*) An unlimited option to purchase the reversion on a lease is void for remoteness : *Woodall* v. *Clifton* [1905], 2 Ch. 257 ; 74 L. J. Ch. 555 ; *Worthing Corpn.* v. *Heather* [1906], 2 Ch. 532 ; 75 L. J. Ch. 761 ; see also 55 Sol. J. 360. The same rule applies in the case of an unlimited power to repurchase reserved to a vendor on a sale : *L. & S. W. Ry.* v. *Gomm* (1882), 20 Ch. D. 562 ; 51 L. J. Ch. 530 ; and see *S. E. Ry.* v. *Associated Portland Cement Manufrs.* [1910], 1 Ch. 12 ; 79 L. J. Ch. 150.

Options under S. L. Act.

As to options under the S. L. Act, 1925, see s. 51 (grant or acceptance of), s. 54 (in a lease acquired), s. 90 (contracts in regard to), s. 101 (notice of intention to grant).

" First refusal."

As to a contract giving the " first refusal " of a property, see *Manchester S. C. Co.* v. *Manchester R. Co.* [1901], 2 Ch. 37 ; 70 L. J. Ch. 468.

(*i*) It will often be convenient to place the conditions of sale in a schedule to the lease ; and see special and general conditions of sale in Vol. I.

day fixed for the completion of the purchase, including the quarter's rent due on that day:

Conveyance.

(3) UPON payment of the purchase-money and all arrears of rent at the time aforesaid, the Vendor and all other necessary parties (if any) shall execute a proper Conveyance [*or* assignment] of the premises to the Purchaser, such Conveyance [*or* assignment] to be prepared by and at the expense of the Purchaser:

Title, when to commence.

(4) THE Vendor shall, within one month from the date of such notice as aforesaid, deliver to the Purchaser or his solicitor an abstract of the Vendor's title to the premises, such title to commence with a Conveyance of Sale dated —— [*or* the said Head Lease, and shall be taken up again with an Assignment dated ——, and the intermediate title shall not be investigated or enquired into]:

Requisition to be sent within specified time.

(5) WITHIN fourteen days after the delivery of the abstract the Purchaser shall state in writing, and send to the Vendor's solicitors, all objections and requisitions (if any) in respect of the title, and all objections and requisitions not sent within that time shall be deemed to be waived, and if any objection or requisition shall be made and insisted on which the Vendor shall be unable or unwilling to remove or comply with, the Vendor may, by giving at least seven days' notice in writing, rescind the sale without payment of any compensation or costs whatsoever,(*j*) and thereupon the said option shall determine:

Devolution of purchase money.

Old law.

(*j*) Under the law in force before 1926, if the option to purchase was exercised by the lessee after the lessor's death, the purchase-money went to his (the lessor's) personal representative as part of his personal estate, and not to the heir or devisee of the real estate: *Lawes* v. *Bennett* (1785), 1 Cox, 167; *Townley* v. *Bedwell* (1808), 14 Ves. 591; *Weeding* v. *Weeding* (1861), 1 J. & H. 424; 30 L. J. Ch. 680; *Re Isaacs* [1894], 3 Ch. 506; 63 L. J. Ch. 815; but subject to evidence of a contrary intention. Thus, if the lessor by a Will or codicil made after the lease or on the same day specifically devised the property, this showed an intention to give to the devisee all the interest, whatever it might be, that the testator had in it: *Emuss* v. *Smith* (1848), 2 Dr. & Sm. 722; *Re Pyle* [1895], 1 Ch. 724; 64 L. J. Ch. 477: *Re Marlay* [1915], 2 Ch. 264; 84 L. J. Ch. 706; *Re Bogg* [1917], 2 Ch. 239; 86 L. J. Ch. 536; the material date of conversion was the date of notice of the exercise of the option: *Re Blake* [1917], 1 Ch. 18; 86 L. J. Ch. 160.

New law.

If the death intestate occurs after 1925 the real and personal estate devolve together: Ad. of E. Act, 1925, s. 46, but the point may still arise where the lessor makes a Will.

Option to purchase devolves with leasehold

The option to purchase is incident to the leasehold interest, and passes with it, so that if the lessee dies intestate it is exercisable by the administrator for the benefit of the statutory next-of-kin: *Re Adams and the Kensington Vestry* (1884), 27 Ch. D. 394; 54 L. J. Ch. 87.

(6) SUBJECT as aforesaid, the General Conditions of 1925 shall apply.(k)

No. 33.

Notices.

SECTION one hundred and ninety-six of the Law of Property Act, 1925, applies to all notices required to be served hereunder. [*This would be so under the section apart from express reference.*]

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interest, but not to equitable assign.

The option does not pass to an equitable assign who has omitted to perfect his title by a legal assignment: *Friary Holroyd, &c.* v. *Singleton* [1899], 2 Ch. 261; 68 L. J. Ch. 622, where, however, the objection on that account was waived by the correspondence; see also *Gentle* v. *Faulkner* [1900], 2 Q. B. 267; 69 L. J. Q. B. 777.

Position of parties after notice.

As to the rights and position of the parties after a valid notice to purchase has been given and before the purchase is completed: *Raffety* v. *Schofield*, [1897], 1 Ch. 937; 66 L. J. Ch. 448.

(k) These Conditions were prepared to provide a general code applicable to nearly every case with a view to securing uniformity of practice under the new law. When incorporated, as in the text, it will not be necessary to peruse the conditions unless some dispute on a practice point arises.

PART II.

PRECEDENTS OF LEASES AND AGREEMENTS FOR LEASES.

SECTION I.

TENANCY AGREEMENTS

No. I.

AGREEMENT *for a* LEASE *of a* HOUSE *from* YEAR TO YEAR *or for a term of* THREE YEARS. (*Legal Estate*).(*a*)

Parties.

AN AGREEMENT made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Landlord, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part:

WHEREBY it is agreed as follows:—

Agreement to let and take house from year to year.

1. THE Landlord shall let, and the Tenant shall take, ALL THAT messuage, &c. (*see Forms in Sect.* II, *Conveyance on Sale, Vol.* I, *pp.* 471, *et seq., for parcels*).

Rent.

THE tenancy shall be from year to year, commencing on the ——day of——, 19— [*or* the tenancy shall be for a term of three years], at the yearly rent of £——, payable by equal quarterly payments on, &c. (*days of payment*), the last quarterly payment to be made in advance on the —— day of —— preceding the end of the tenancy, together with the quarter's rent due on that day.

Tenant to pay rates and taxes.

2. THE Tenant to pay all rates, taxes, and assessments payable by the Tenant or occupier in respect of the premises during the tenancy.

To keep glass in the windows, &c.

AND to keep all the glass in the windows, and all shutters, locks, fastenings, bells, and other internal fixtures in, upon, and

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Registered land.

Tenancies granted by persons in fiduciary position.

(*a*) Where the lessor's title is registered, the heading will be as in Form No. 1, p. 1014, the registered proprietor will grant the lease or tenancy, see note to that form. A tenant for life may in writing grant a tenancy for not more than three years at the best rent without a fine, but the tenant must not be exempted from liability for fair wear and tear: S. L. Act, 1925, s. 42 (5); *Davies* v. *D.* (1888), 38 Ch. D. 499; trustees for sale: L. P. Act, 1925, s. 28, and personal representatives: Ad. of E. Act, 1925, s. 36, can do so also.

belonging to the premises in good and sufficient repair (*b*) during the tenancy, and the same in good and sufficient repair to deliver up at the end thereof [reasonable wear and tear and damage by fire excepted]:

[Not to assign or underlet without consent.]

[THE Tenant shall not assign, underlet or part with the possession of the premises, or any part thereof, without the consent in writing of the Landlord.(*c*)]

Condition of re-entry.

3. IF any rent shall be in arrear for twenty-eight days, whether legally demanded or not, or there shall be any breach by the Tenant of the conditions herein contained, the Landlord may re-enter on the premises without giving any notice to quit and expel the Tenant therefrom.

Landlord agrees for quiet enjoyment by Tenant.

4. THE Landlord agrees that the Tenant, paying the said rent and observing the conditions herein contained, shall quietly hold and enjoy the premises without any lawful interruption by the Landlord (meaning himself personally) or any person rightfully claiming under him.(*d*)

Insurance.

5. THE Landlord shall insure against fire, and apply any insurance money in rebuilding or reinstating the damaged premises.(*e*)

[Waste.]

[6. NOTHING herein contained shall free the Tenant from liability for waste.]

AS WITNESS the hands of the parties hereto the day and year first above written.

(*b*) As to the meaning of good and sufficient repair: *Anstruther-Gough-Calthorpe* v. *McOscar* [1924], 1 K. B. 716; 93 L. J. K. B. 273.

(*c*) This agreement runs with the land: *Goldstein* v. *Sanders* [1915], 1 Ch. 549; 84 L. J. Ch. 386; unless there is other sufficient indication that it is intended to be personal: *Re Stephenson* [1915], 1 Ch. 802; 84 L. J. Ch. 563; no fine can be exacted for licence to assign: L. P. Act, 1925, s. 144.

Agreement not to assign, &c.

As to the agreement not to assign or underlet without consent: *Commissioners of Works* v. *Hull* [1922], 1 K. B. 205; 91 L. J. K. B. 308; *Elliott* v. *Boynton* [1924], 1 Ch. 236; 93 L. J. Ch. 122; *Atkin* v. *Rose* [1923], 1 Ch. 522; 92 L. J. Ch. 209; *Fuller* v. *Rofe* [1923], A. C. 435; 92 L. J. P. C. 116; *Jackson* v. *Simons* [1923], 1 Ch. 373; 92 L. J. Ch. 161; *Chatterton* v. *Terrell* [1923], A. C. 578; 92 L. J. Ch. 605; *Russell* v. *Beecham* [1924], 1 K. B. 525; 93 L. J. K. B. 441; *Roberts* v. *Enlayde* [1924], 1 K. B. 335; 93 L. J. K. B. 593.

Quiet enjoyment.

(*d*) A lessor is not liable under this agreement for conniving at a nuisance committed by another of his lessees, if he does not actively participate therein. A lessor cannot be made to use for the benefit of one tenant all the powers he may have under agreements with other tenants: *Malzy* v. *Eichholz* [1916], 2 K. B. 308; 85 L. J. K. B. 1132. See also *Browne* v. *Flower* [1911], 1 Ch. 219; 80 L. J. Ch. 181; *Phelps* v. *City Corporation* [1916], 2 Ch. 255; 85 L. J. Ch. 535; *Harmer* v. *Jumbil Tin Areas* [1921], 1 Ch. 200; 90 L. J. Ch. 140.

Insurance.

(*e*) As to the construction of covenants to insure against fire and the extent of the liability of the covenantee to make good any deficiency out of his own

No. II.

AGREEMENT *for a* THREE YEARS' TENANCY, *with option to the Tenant to have a* LEASE *for a longer* TERM. (*Legal Estate.*)

AN AGREEMENT, &c. (*same as last Precedent to the end, and then add the following, which may be registered as an estate contract: L. C. Act*, 1925, *s.* 10, *Class* C (iv)):

Option to take lease.

7. PROVIDED that if at any time during the tenancy hereby created the Tenant shall be desirous of having a Lease of the premises for a term of twenty-one years determinable by him at the end of the first seven [or fourteen] years, and shall give to the Landlord a notice in writing to that effect, then and in such case the Landlord shall grant to the Tenant a Lease of the premises accordingly for such term as aforesaid, the Lease to commence from the quarter day next following the date of such notice, at the yearly rent of £——, and subject to the covenants and provisions contained in the form of Lease contained in the Schedule hereto [*or* which has been produced to the Tenant and signed by him, being the form usually adopted on the —— Estate, of which the premises are part].

AS WITNESS, &c.

THE SCHEDULE.

Form of Lease.

No. III.

AGREEMENT *for a* WEEKLY TENANCY *of a* HOUSE *or* PART *of a* HOUSE. (*Legal Estate.*)

AN AGREEMENT, &c. (*same as Prec.* I, *p.* 1038), WHEREBY IT IS AGREED as follows:—

Parcels and nature of tenancy.

1. THE Landlord shall let, and the Tenant shall take, the house No. — in —— Street, in the Parish of ——, in the County of —— [*or* the following rooms in the house, &c. (*describing them*)], on a weekly tenancy at the weekly rent of —— shillings, the tenancy to commence on Monday, the —— day of ——, 19—, and to be determinable by either party on any Monday by a week's previous notice.

Rent.

2. THE rent shall be paid every Monday.

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money: *Enlayde* v. *Roberts* [1917], 1 Ch. 109; 86 L. J. Ch. 149; in the absence of any special stipulation a tenant is only bound to effect the usual policy issued by the insurance company named or by the class of company mentioned: *Upjohn* v. *Hitchins* [1918], 2 K. B. 48; 87 L. J. K. B. 1205.

[Return of part of rent on punctual payment.]

[3. At the end of every quarter one-twentieth part of the rent paid during the preceding quarter shall be returned to the Tenant if the Tenant has not, during that quarter, failed once to pay the rent on the day on which it became due.(*f*)]

Tenant to keep premises clean.

3. The Tenant shall keep the premises clean and in good condition (damage by reasonable wear and tear and fire excepted), and replace immediately all cracked and broken glass.

Not to underlet or take lodgers.

4. The Tenant shall not assign or underlet any part of the premises, nor take any lodger without the written consent of the landlord.

Nor annoy neighbours.

5. The Tenant shall not do or permit to be done on the premises any act or thing which may cause discomfort or annoyance to the neighbours.

Right of Landlord to enter.

6. The Landlord shall be at liberty at any time, by himself or his agents or workmen, to enter and inspect the state of repair and condition of the premises, and to execute any repairs therein.

Rates, taxes and insurance.

7. The Landlord shall pay all rates and taxes (*g*) and insure against fire.

As witness, &c.

No. IV.

TENANCY AGREEMENT *of a* Furnished House (*h*) *with* Garden *for a short period*, Tenant *to take care of furniture*, Landlord *to keep house in repair and garden in good order.* (*Legal Estate.*)

AN AGREEMENT, &c. (*as in Prec.* I, *p.* 1038), Whereby it is agreed as follows :—

Agreement to let and take house and furniture.

1. The Landlord shall let, and the Tenant shall take, All that messuage called ——, situated at ——, with the garden, grounds, and other appurtenances thereto belonging, and also the furniture and effects therein, as mentioned in an inventory signed by both parties, from the —— day of ——, until the ——

(*f*) A return of part of the rent on regular payment will be much appreciated by a good tenant.

Term of years absolute.

The definitions of "term of years absolute": L. P. Act, 1925, s. 205 (1) (xxvii); S. L. Act, 1925, s. 117 (1) (xxviii), are wide enough to include a weekly tenancy. The essence of the definition is that the interest is not to terminate on the dropping of a life, though after a death it may be terminable by notice.

Flats, &c.

"Land" is so defined as to include a flat, &c.: *ib.*, s. 205 (1) (ix); 117 (1) (ix).

(*g*) See *Atkins* v. *Hutton* (1910), 8 L. G. R. 513, where it was held that the covenant to pay rates, &c., constituted an indemnity to the lessee.

(*h*) See last chapter, pp. 950–51, as to the implied condition that the house is fit for habitation.

Rent.

day of —— next, at the rent of £—— for every month of the said tenancy, to be paid on the —— day of each month, the first payment to be made on the —— day of —— next.

Tenant to keep furniture in good condition, and to give up house and furniture in as good condition as same now in.

2. The Tenant shall—

(1) Keep the said furniture and effects clean and in good condition and repair, and at the end of the tenancy leave the said messuage, together with the said furniture and effects, clean and in as good state, condition, and repair as they are now in, and make compensation for any damage done, or for any articles missing (reasonable wear and tear and damage by fire excepted);

Not to assign or underlet without consent.

(2) Not assign, underlet or part with the possession of the premises or any part thereof, nor remove the said furniture and effects or any of them from the premises, without the consent of the Landlord.(*i*)

Condition for re-entry.

3. If any rent, &c. (*condition for re-entry, as in clause* 3 *of Prec.* I, *p.* 1039, *supra*).

Landlord to do repairs, pay rates, and insure.

4. The Landlord shall—

(1) Execute all outside and inside repairs of the said messuage which may be found necessary in the course of reasonable wear and tear, and pay [the ground rent, and] all rates and taxes of every description, and indemnify the Tenant therefrom, and keep the premises insured against fire;(*j*)

To keep garden in good order.

(2) Keep the garden and grounds belonging to the said messuage in good order and condition during the tenancy;

Quiet enjoyment.

(3) Provided that the Tenant pays the said rent and observes the conditions imposed on him, then the Tenant shall (*continue as in clause* 4, *of Prec.* I, *p.* 1039).

As witness, &c.

Infectious diseases.

(*i*) If desired the following agreement may be added:—

Forthwith give notice to the Landlord and to the Medical Officer of Health of any infectious disease which may occur on the premises during the subsistence of the tenancy, and comply with the requirements of the local authority in regard to disinfection.

Liability for repairs.

(*j*) As to the liability of a landlord where the tenant fails to notify him regarding the necessity for repairs: *Hugall* v. *McKean* (1885), 53 L. T. 94; *Melles* v. *Holme* [1918], 2 K. B. 100; 87 L. J. K. B. 942; *Murphy* v. *Hurley* [1922], 1 A. C. 369; 91 L. J. P. C. 116. As to the landlord's liability to repair where part only of the house is let: *Lucy* v. *Bawden* [1914], 2 K. B. 318; 83 L. J. K. B. 523; *Hart* v. *Rogers* [1916], 1 K. B. 646; 85 L. J. K. B. 273; *Phelps* v. *London City Corporation* [1916], 2 Ch. 255; 85 L. J. Ch. 535; *Middleton* v. *Hall*, 108 L. T. 804; *Melles* v. *Holme* [1918], 2 K. B. 100; 87 L. J. K. B. 942; *Dunster* v. *Hollis* [1918], 2 K. B. 795; 88 L. J. K. B. 331.

No. V.

TENANCY AGREEMENT *of* UNFURNISHED APARTMENTS *on a* QUARTERLY TENANCY. (*Legal Estate.*)

AN AGREEMENT, &c. (*as in Prec.* I, *p.* 1038), WHEREBY IT IS AGREED as follows :—

Agreement to let rooms.

1. (1) THE Landlord shall let, and the Tenant shall take, the following rooms, part of a dwelling-house, No. — in —— Street, in the town of —— (namely), the whole of the first and second floors, together with the use (in common with the other occupants of the house) of the staircase and the water-closet on the ground floor ;

From quarter to quarter.

(2) The tenancy shall be from quarter to quarter, commencing on the 25th day of this present month of March,(*k*) and determinable on any quarter day by either party giving to the other at least a quarter's notice to quit, at the rent of £—— for every quarter, to be paid on every quarter day during the tenancy.

Rent.

Tenant to give up premises in as good condition as same are now in.

2. THE Tenant shall deliver up the premises at the end of the tenancy in as good repair and condition as the same are now in (reasonable wear and tear and damage by fire excepted).

Landlord to pay rates, &c.

3. THE Landlord shall pay all rates and taxes which may become payable in respect of the premises during the tenancy, and keep the premises insured against fire.

AS WITNESS, &c.

No. VI.

TENANCY AGREEMENT *of* FURNISHED APARTMENTS *for* SIX MONTHS.(*l*) (*Legal Estate.*)

Agreement to let and take rooms and furniture.

AN AGREEMENT, &c. (*as in Prec.* I, *p.* 1038), WHEREBY IT IS AGREED as follows :—

For six months.

Rent to be paid monthly.

1. THE Landlord shall let, and the Tenant shall take, ALL THOSE three rooms on the first floor of the messuage known as ——, situated, &c., and all the furniture, articles, and things in or about the same specified in an inventory signed in duplicate by the parties hereto, for the term of six months from the —— day of ——, at the rent of £—— for every month, such rent to be paid on the first day of every month, the first payment to be made on the first day of —— next.

(*k*) It is assumed that the tenancy commences at Lady Day.

(*l*) There is no implied warranty on the part of the tenant that he is a fit person to occupy the apartments : *Humphreys* v. *Miller* [1917], 2 K. B. 122 ; 86 L. J. K. B. 1111.

Tenant to give up rooms, &c., in as good condition as same are now in.

2. The Tenant shall at the expiration of the tenancy deliver up the said rooms, furniture, articles and things in as good a condition as the same are now in, reasonable wear and tear and damage by fire excepted.

Condition of re-entry.

3. If any monthly payment of rent shall be in arrear for more than fourteen days the Landlord may re-enter on the premises and determine this agreement.

Landlord to pay rates, &c.

4. The Landlord shall pay all rates and taxes which may become payable in respect of the premises during the tenancy and keep the premises insured against fire.

As witness, &c.

Section II.

LEASES (HOUSES).

No. I.

LEASE *of a* Dwelling-house *for* Twenty-one [Fourteen] Years, *determinable on* Notice *at the end of* Seven [*or* Fourteen] Years. Usual Covenants *by* Lessee, *including covenants not to* Assign *or* Underlet *without consent of* Lessor *or use the* House *except as a* Dwelling-house.(*m*) (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), Between A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him),

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Use of the words "Lessor" and "Lessee" in the same deed.

(*m*) For variations of this Precedent to meet the cases where the lessor is not an absolute owner, or where the lessor's title is registered, or where special reservations or exceptions are required, see Forms, pp. 1014–28.

To avoid clerical errors the words "Lessor" and "Lessee" are not used in the same Precedent together.

Leases of registered land. Registration of title to leases. Effect of caution notice, &c., against lessor's title.

The registered proprietor has power to grant leases: L. R. Act, 1925, s. 18 (1) (e), and underleases: *ib.*, s. 21 (1) (d), of registered land, but the lessee or underlessee will not register his title to the lease or underlease, unless the term created exceeds twenty-one years: *ib.*, ss. 8, 19 (2), 22 (2); in other cases the title must be registered. But if the lease or underlease contains an absolute prohibition against dealings *inter vivos*, it is not registrable: *ib.*, s. 8 (2). Only legal estates are registrable: *ib.*, s. 2. In the Act "lease" includes an underlease or tenancy: *ib.*, s. 3 (x). Applications for registration of title to leases are made under *ib.*, s. 8. A lease at a rent without a fine, for a term not exceeding twenty-one years to take effect in possession or within one year, though a caution notice, &c., may be subsisting, may be granted by the proprietor, but will take effect, subject to the interest of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part:

WITNESSETH, in consideration of the rent hereinafter reserved, and of the Tenant's covenants herein contained, and it is hereby declared as follows:—

Demise.

1. THE Lessor hereby demises unto the Tenant,

Parcels.

ALL THAT messuage, &c. (*see Forms in Sect.* II, *Conveyances on Sale, Vol.* I, *pp.* 471, *et seq.*).

TO HOLD unto the Tenant for the term of twenty-one [fourteen] years from the —— day of ——,

Reddendum.

YIELDING AND PAYING therefor during the said term the yearly rent of £——, by four equal quarterly payments, on the 25th March, the 24th June, the 29th September, and the 25th

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Entry of lease as an incumbrance against the lessor's title. Leases take effect as registered dispositions. Adverse notices distinguished from registration of title. Deeds off the register discouraged. Variation of a lease. Adverse entries.

protected by the caution, &c.; *ib.*, ss. 18 (3), 21 (3). No entry against the lessor's title is required where the lease, at a rent without a fine, does not grant a longer term than twenty-one years: *ib.*, ss. 19 (2) (a), 22 (2) (a), but where not required to be registered or noted against the lessor's title, it nevertheless takes effect as a registered disposition on being granted: *ib.* Notices of a lease are entered against the lessor's title under *ib.*, s. 48; this must be distinguished from registration of the lessee's title under s. 8. Deeds off the register will generally be useless where the proprietor can and does effect the transaction by a registered disposition: *ib.*, s. 39. The determination or variation of a lease will be noted: *ib.*, s. 46. The effect of a notice on the register is that a disposition will take effect, subject to the right protected, but only so far as it is valid, and is not overridden independently of the Act: *ib.*, s. 52.

Effect of registration on legal estate. Over-riding interests. Leases not exceeding twenty-one years.

The effect of registration of title is to transfer the legal estate in question to the proprietor, subject to overriding interests: *ib.*, s. 69. Every registered title is, subject to entries to the contrary on the register, deemed to be subject to the overriding interests, if any, affecting it as defined in s. 70. These include the rights of a person in actual occupation or in receipt of rents, save where enquiry is made of such person and his rights are not disclosed: *ib.*, s. 70 (1) (g), and leases not exceeding twenty-one years granted at a rent without taking a fine: *ib.*, s. 70 (1) (k). It is on this account that the titles to such leases are not registrable, and that no adverse entry in respect thereof is to be made against the lessor's title.

Leases under statutory powers.

Leases under statutory powers (*e.g.*, by mortgagors and mortgagees in possession) may be granted in the name of the registered proprietor, without prejudice to the priority acquired by the exercise of the power: *ib.*, s. 104.

Powers off the register.

Subject to the express exceptions, powers off the register will not be exercised where the transaction can be carried out by the proprietor under the powers conferred on him by the Act: *ib.*, s. 109.

Compulsory orders. Forty years to run.

Though an order for compulsory registration of title does not apply to the grant or assignment of leaseholds unless the term has not less than forty years to run: *ib.*, s. 123, this must be distinguished from the obligation to register the title to a lease granted for more than a twenty-one years term by a proprietor, for in this case the title to the land is already registered.

As to the effect of the L. R. Rules, 1925, in regard to leases, see note to Form No. 1, *supra*, pp. 1015–16.

December, in every year, clear of all deductions (except in respect of landlord's property tax [land tax] (*n*) and tithe rentcharge), the first payment to be made on the —— day of —— next.(*o*)

Covenants by Lessee.

2. THE Tenant,(*p*) hereby covenants with the Lessor in manner following (that is to say) :—

To pay rent, rates and taxes.

(1) To pay the rent hereby reserved at the times and in manner aforesaid, and to pay and discharge (in addition to the rent) all rates, taxes, duties, assessments and charges whatsoever, whether parliamentary, parochial or of any other description, which now are or during the said term shall be imposed or charged on the premises [or the landlord or tenant in respect thereof] except [land tax] tithe rentcharge and landlord's property tax [*or substitute Form No.* 21, *p.* 1029, *supra, and see notes thereto*] :

To keep in repair and deliver up in repair at end of term.(*q*)

(2) (*Form No.* 24, *p.* 1032, *supra, and see notes thereto*) :

To paint outside every —— years, and inside every seven years.

To restore rough cast and whitewash and colour inside.

(3) To paint with two coats at least of good oil colour or with a proper coating of creosote or tar or varnish, and in a proper and workmanlike manner, all the wood, iron and other work in and about the premises previously or usually painted, tarred or varnished, as to outside work in every —— year of the said term, and as to inside work in every seventh year of the said term, and [at the same time with every outside painting to restore and make good the rough cast or stucco work wherever necessary, and] at the same time with every inside painting to whitewash and colour such parts of the inside of the premises as are usually whitewashed and coloured, and

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(*n*) See *Mansfield* v. *Relf* [1908], 1 K. B. 71 ; 77 L. J. K. B. 145.

(*o*) The next quarter day occurring after the date of the lease should be put first, see *Simmer* v. *Watney* (1911), 28 T. L. R. 162. Sometimes the last quarter's rent is made payable in advance. In such case add here "and the last quarterly payment to be made in advance on the 29th September immediately preceding the expiration of the said term, together with the quarter's rent then due."

Rent in advance.

Covenants "for self and assigns." With two or more lessors.

(*p*) This operates as a covenant by the tenant "for himself and his assigns" : L. P. Act, 1925, s. 79 ; the covenant will be enforceable though the subject-matter may not be in existence when the covenant is made : *ib.* If there are two or more lessors, the covenant will operate as a joint covenant with them and a separate covenant with each of them : *ib.*, s. 81 (1).

Sale of fixtures.

(*q*) See *Leschallas* v. *Woolf* [1908], 1 Ch. 641 ; 77 L. J. Ch. 345 ; *Slough Picture Hall* v. *Wade*, 32 L. T. R. 542 ; *Pole Carew* v. *W. C. and General Manure Co.* [1920], 2 Ch. 97 ; 89 L. J. Ch. 559 ; as to landlord's right to receive proceeds of sale of fixtures wrongfully sold during the tenancy : *Re British Red Ash Coll. Ltd.* [1920], 1 Ch. 326 ; 88 L. J. Ch. 212.

paper with paper of suitable quality such parts thereof as are usually papered :(r)

To contribute to repairs of party walls, &c.(s)

(4) To pay and contribute a fair proportion of the expenses of making, repairing, and cleansing all party and other walls, gutters, sewers and drains belonging to the demised premises in common with the adjacent premises :

To permit Lessor to view state of premises, and to repair after notice.

(5) To permit the Lessor or his agent, with or without workmen, and others, twice in every year during the said term, at convenient hours in the daytime, to enter into and upon the premises and examine the state and condition thereof, and to repair and make good all defects and wants of reparation, of which notice in writing shall be given to him by the Lessor, within three months after the giving of such notice :

To insure, &c.

(6) (*Form No.* 22, *p.* 1031, *supra, and see notes thereto*) :

Not to carry on any trade, but to use as private dwelling-house.

(7) Not at any time during the said term to carry on or permit to be carried on any trade or business upon the premises, or permit the same to be occupied or used in any other manner than as a private dwelling-house or as flats :(t)

Not to assign, &c.

(8) (*Form No.* 23, *p.* 1032, *supra, and see notes thereto*) :

As to notice board.

(9) To permit the Lessor at any time during the last year of the said term to enter upon the premises hereby demised for the purpose of erecting a notice board stating that the premises are to let, which board shall not be interfered with by the Tenant.

Power of re-entry for non-payment of rent or breach of covenants.

3. PROVIDED that if the yearly rent hereby reserved, or any part thereof, shall be in arrear for at least twenty-one days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall have been legally demanded or not, or if there shall be any breach or non-observance of any of the covenants by the Tenant hereinbefore contained,(u)

Painting.

(r) The above covenants as to painting, &c., may be altered according to the custom in the district or on the particular estate, or to any other circumstances; this liability arises at the commencement of each specified year of the tenancy and must be executed by the tenant whether or not the tenancy is determined before the end of that year : *Kirklinton* v. *Wood* [1917], 1 K. B. 332 ; 86 L. J. K. B. 319.

Party walls and structures.

(s) See 54 Sol. J. 423. As to party walls: L. P. Act, 1925, s. 38, 1st Sch., Pt. V, and see s. 187 (2). Party walls (where formerly held in undivided shares) are divided vertically, the owner of such part has rights of support and user over the other part corresponding to those which would have subsisted, if a valid tenancy in common had been created : 1 Wolst. & Cherry, 11th ed., 191–92, 511–12.

"Permit."

(t) The word "permit" does not bind the lessee to do more than is reasonably necessary to secure the execution of this covenant : *Berton* v. *Alliance Economic Investment Co.* [1922], 1 K. B. 742 ; 91 L. J. K. B. 748.

(u) The above proviso for re-entry will apply to the breach of a negative then and in any such case the Lessor may at any time thereafter, into and upon the demised premises, or any part thereof, in the name of the whole re-enter, and the same have again, repossess and enjoy as in his former estate.

Power for Lessee to determine Lease at end of seven [or fourteen] years.

4. (1) Provided, that if the Tenant shall be desirous of determining the term hereby granted at the end of the first seven [or fourteen] years, and of such desire shall give to the Lessor or his agent, or leave at his usual or last known place of abode in England or Wales, at least two quarters' previous notice in writing, then and in such case at the end of such seven [or fourteen] years [as the case may be], the term hereby granted shall cease, but subject and without prejudice to the rights and remedies of the Lessor in respect of any rent in arrear, or any breach of any of the covenants (*v*) by the Tenant herein contained :

Notices.

(2) Section one hundred and ninety-six of the Law of Property Act, 1925, applies to all notices required to be served hereunder.

Covenant by Lessor for quiet enjoyment.

5. (*Form No. 25, p. 1032, supra, and see notes thereto.*)

In witness, &c.

No. II.

LEASE *of a* House *and* Garden *where the* Lessee *does the* Internal *and the* Lessor *the* External Repairs. (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), Between, &c. (*parties as in Form No. 1, and see heading applicable to registered*

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as well as an affirmative covenant : *Evans* v. *Davis* (1878), 10 Ch. D. 747 ; 48 L. J. Ch. 223 ; *Harman* v. *Ainslie* [1904], 1 K. B. 698 ; 73 L. J. K. B. 539.

Sometimes the following words are added here :—

Variation where right of re-entry is to apply on bankruptcy.

" Or if the Tenant shall become bankrupt or make an arrangement or composition with his creditors, or if the premises hereby demised shall become vested in a company and a Receiver shall be appointed or the Company shall enter into liquidation whether compulsory or voluntary (except a voluntary liquidation of a solvent company for the purposes of reconstruction)."

Relief against forfeiture, &c.

As to relief against forfeiture : L. P. Act, 1925, ss. 146 (breach of covenant), 147 (decorative repairs) : 1 Wolst. & Cherry, 11th ed., 379–90.

Notices.

(*v*) As to what is a sufficient notice under this clause, see *Bury* v. *Thompson* [1895], 1 Q. B. 696 ; 64 L. J. Q. B. 500. Notice should be given by all the lessees : *Re Viola* [1909], 1 Ch. 244 ; 78 L. J. Ch. 128 ; *Burch* v. *Farrows Bank* [1917], 1 Ch. 606 ; 86 L. J. Ch. 400. L. P. Act, 1925, s. 196, applies to notices required to be served by any instrument affecting property coming into operation after 1925, unless a contrary intention appears : *ib.*, s. 196 (5).

land, and notes to that form, p. 1014), WITNESSETH, in consideration of the rent hereinafter reserved and of the Tenant's covenants herein contained, and it is hereby declared as follows :—

Demise.

1. THE Lessor hereby demises unto the Tenant,

Parcels.

ALL THAT messuage, &c., together with the garden, conservatory, garage and buildings thereto belonging, and the fixtures mentioned in the Schedule hereto,

TO HOLD unto the Tenant for the term of twenty-one [fourteen] years from the —— day of ——, 19—,

Reddendum.

YIELDING AND PAYING, &c. (*rent, as in Form No.* 1, *p.* 1015).

Covenants by Lessee.

2. THE Tenant hereby covenants with the Lessor in manner following (that is to say) :—

To pay rent, rates and taxes.

(1) and (2) (*Form No.* 21, *p.* 1029, *supra, and see notes thereto*) :

To repair (except walls and roofs) and to deliver up in repair at end of term.

(3) At all times during the said term to keep the premises, including all fixtures and additions thereto (except the main walls and roofs of buildings), in good and substantial repair and condition and the same (except as aforesaid) in such good and substantial repair and condition to deliver up to the Lessor at the expiration or sooner determination of the said term :

To paint inside.

(4) Once in every —— years of the term, and in a proper and workmanlike manner, to paint the inside wood and iron work painted with two coats of good oil colour, and whitewash and paper with suitable paper such parts of the premises as are usually whitewashed and papered respectively :(*w*)

To view.

(5) (*Permit lessor to enter and view, and to repair after notice of defects, clause* 2 (5) *of last Precedent*) :

To insure.

(6) (*To insure, Form No.* 22, *p.* 1031) :

To use premises as a private dwelling-house, and not to assign, &c., without Lessor's consent.

(7) Not to use the said dwelling-house otherwise than for a private dwelling-house or as flats,(*x*) nor to assign or underlet the same or any part thereof, without the previous written consent of the Lessor, unless such consent shall be unreasonably withheld.

3. PROVIDED (*power of re-entry on non-payment of rent or breach of covenants, as in clause* 3 *of last Precedent, p.* 1047).

Covenants by Lessor to keep outside

4. (1) THE Lessor hereby covenants with the Tenant that the Lessor will keep the outer walls and roof of the said dwelling-

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Covenant to paint.

(*w*) Add here, if required, a covenant as to preserving trees and shrubs, &c., see next Precedent. The covenant to paint, &c., becomes operative at the beginning of the specified year of tenancy, whether or not the tenancy is determined before the end of the year : *Kirklinton* v. *Wood* [1917], 1 K. B. 332 ; 86 L. J. K. B. 319.

(*x*) See *Berton* v. *Alliance, &c., Co.* [1922], 1 K. B. 742 ; 91 L. J. K. B. 748.

in repair, and to paint outside once every —— years.

house and buildings in good repair and condition, and will once in every —— years during the said term paint with good oil colour, or tar or varnish, all the outside wood and ironwork which is usually painted, tarred or varnished :

(2) That the Tenant paying, &c. (*Covenant for quiet enjoyment, Form No.* 25, *p.* 1032).

IN WITNESS, &c.

THE SCHEDULE.

Particulars of fixtures.

No. III.

UNDERLEASE (*y*) *of a* DWELLING-HOUSE *and* GARDEN *for a* TERM *of* SEVEN YEARS, *determinable by* EITHER PARTY *at the* END *of the* THIRD *or* FIFTH YEAR ; *the* INTERNAL REPAIRS *to be done by the* LESSEE, *and the* EXTERNAL REPAIRS *by the* LESSOR, *who also* INSURES *against* FIRE. (*Legal Estate.*)

THIS UNDERLEASE, made (*date*) (*parties as in Form No.* 1, *p.* 1014, *and see heading applicable to registered land and notes to that form*) :

WITNESSETH, in consideration of the rent hereinafter reserved and of the Tenant's covenants herein contained, and it is hereby declared as follows :—

Demise.

1. THE Lessor hereby demises unto the Tenant,

Parcels.

ALL THAT, &c. (*see Forms, Sect.* II, *Conveyances on Sale, Vol.* I, *pp.* 471, *et seq.*), TOGETHER with the fixtures now in and about the premises, a list whereof is contained in the Schedule hereto,

TO HOLD unto the Tenant for the term of seven years from the —— day of ——, 19—, determinable nevertheless as hereinafter mentioned,

Rent.

YIELDING AND PAYING, &c. (*rent as in Form No.* 1, *p.* 1015),

Further rent in respect of insurance against fire.

ALSO YIELDING AND PAYING during the term by way of further rent a yearly sum equal to the money which the Lessor shall from time to time pay by way of premium for keeping the premises insured against loss or damage by fire, pursuant to the covenant for that purpose hereinafter contained, the said further

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Underleases.

(*y*) For special Precedents of Underleases, see Miscellaneous Precedents, *infra*, pp. 1194–99.

rent to be paid [once] a year on the quarter day immediately following the payment of such premium.(*z*)

Lessee's covenants.

2. The Tenant hereby covenants with the Lessor in manner following (that is to say):—

To pay rent, &c.

(1) and (2) (*To pay rent, &c., Form No.* 21, *p.* 1029, *supra*):

To keep inside in repair.

(3) At all times during the said term to keep in good repair and condition the inside of the said messuage and premises, and the fixtures mentioned in the Schedule hereto, and the same in such repair and condition deliver up at the end of this Lease (reasonable wear and tear and damage by fire excepted):

To keep garden in good order.

(4) To keep the lawns properly mown, free from weeds, and treated with lawn sand or sulphate of ammonia and the worms thereunder properly killed down from time to time and the garden and walks in good order, and the trees and ornamental shrubs properly pruned and the fruit trees winter washed with caustic alkali when required to keep them free from moss and canker and to renew any trees or shrubs which may perish or decay and not to cut down or remove any trees or shrubs, or alter the laying out of the garden, without the written consent of the Lessor:

To permit Lessor, &c., to view.

(5) To permit the Lessor, and also the superior landlord, from time to time to enter into and upon the premises in order to view the state and condition thereof:

Not to assign without licence, or carry on trade.

(6) Not, without the consent in writing of the Lessor, to assign, underlet or part with the possession of the premises or any part thereof, or carry on or permit to be carried on any trade or business thereon, or permit (*a*) the same to be occupied in any other manner than as a private dwelling-house [or as flats (*b*)]:

Not to allow sale by auction.

(7) Not to allow any sale by auction to take place on the premises, or to do or suffer any other thing whatsoever which might be an annoyance to the neighbours or a breach of any covenant or condition in the Head Lease hereinafter mentioned.

3. (*Proviso for re-entry on non-payment of rent or breach of covenants, as in clause* 3 *of Prec.* I *of this section, p.* 1047).

Form of covenants in an underlease.

(*z*) When the sub-lessor is himself a lessee and has covenanted with the ground landlord for insurance, it is generally more convenient that he, and not the sub-lessee, should see to the insurance, the latter paying an additional rent equal to the premium. In other respects the sub-tenant's covenant should follow the wording in the superior lease so far as possible.

(*a*) As to the meaning of "permit," see *Berton* v. *Alliance, &c., Co.* [1922], 1 K. B. 742; 91 L. J. K. B. 748.

(*b*) Such a covenant runs with the land: *Re Stephenson & Co.* [1915], 1 Ch. 802; 84 L. J. Ch. 563; see also *Goldstein* v. *Sanders* [1915], 1 Ch. 549; 84 L. J. Ch. 386.

4. The Lessor hereby covenants with the Tenant in manner following (that is to say):—

Covenant by Lessor for quiet enjoyment.

(1) That, &c. (*covenant for quiet enjoyment, Form No. 25, p.* 1032, *supra*):

To keep outside of house in good repair,(c) and observe covenants in head lease.

(2) That the Lessor will during the said term pay the rent reserved by the Head Lease hereinafter mentioned in respect of the premises, and will keep the outside walls and roofs, with the outside water pipes and shoots and outside drains and sewers, properly repaired and cleansed, and the exterior woodwork and ironwork properly and sufficiently painted, tarred or varnished as required to be done under the Lease from the superior landlord dated the —— day of —— (in this deed called the Head Lease):

To insure against fire. (*d*)

(3) That the Lessor will at all times during the said term keep the said messuage and buildings insured against loss or damage by fire in the sum of £—— at least, in conformity with the covenant for that purpose contained in the Head Lease; and will, whenever so required by the Tenant, produce to him the policy of such insurance and the receipt for the last premium, and will cause all money received in respect of such insurance to be forthwith laid out in reinstating the premises, And also will at all times at the request and cost of the Tenant produce to him the Head Lease.

To produce superior lease.

Rent to be suspended in case of destruction by fire [or tempest].

5. (1) Provided that if the said dwelling-house and buildings, or any part thereof, shall be destroyed or rendered uninhabitable or unfit for use by fire [*or* tempest] during the said term, then, and so often as the same shall happen, a just proportion of the rent hereby reserved, according to the extent of the injury sustained, shall cease and be suspended so long as the premises or any part thereof shall remain uninhabitable or unfit for use:

(2) If any dispute shall arise between the Lessor and the Tenant in regard to the amount of the abatement to be made in the said rent, or the period for which the said rent or any part thereof shall be suspended, the same shall be referred to a single arbitrator if agreed, or to two arbitrators in default of agreement, under the Arbitration Act, 1889.

(*c*) See *Dewar* v. *Goodman* [1909], A. C. 72; 78 L. J. K. B. 209, as to the effect of a covenant by the lessor to observe, &c., the covenants in the head lease.

(*d*) As to the construction of covenants to insure against fire: *Enlayde* v. *Roberts* [1917], 1 Ch. 109; 86 L. J. Ch. 149; *Upjohn* v. *Hitchins* [1918], 2 K. B. 48; 87 L. J. K. B. 1205.

6. (1) PROVIDED that if the Lessor or the Tenant shall be desirous of determining this Lease at the expiration of the third or fifth year of the said term, and of such desire shall give to the other party, or leave for him at his usual or last known place of abode in England, at least two quarters' previous notice in writing, then on the expiration of the said third or fifth year, as the case may be, the term hereby granted shall cease, but without prejudice to the rights and remedies of the Lessor for any arrears of rent or any breach of the Tenant's covenants:(*f*)

Power to either party to determine Lease at end of third or fifth year.

[(2) *Form No.* 33, *p.* 1037, *supra, if desired; the section would apply without being expressly mentioned.*]

[Notices.]

IN WITNESS, &c.

THE SCHEDULE.

Particulars of fixtures.

No. IV.

LEASE *of a* HOUSE *by* MORTGAGEE *and* MORTGAGOR.(*g*) (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made (*date*) (*continue as in Form No.* 2, *p.* 1016, *and see heading applicable to registered land and notes to that form*),

Parties.

WITNESSETH, in consideration of the rent hereinafter reserved and of the Tenant's covenants herein contained, and it is hereby declared as follows:—

1. THE Lessor, at the request of the Mortgagor, hereby demises, and the Mortgagor hereby demises and confirms unto the Tenant,

Mortgagee and Mortgagor demise to Lessee.

ALL, &c. (*parcels—habendum to Tenant for twenty-one or fourteen years, at a yearly rent, as in Prec.* I *of this section, p.* 1045).

2 and 3. (*Covenants by Tenant with Lessor, and power of re-entry, as in Prec.* I *of this section, pp.* 1046, *et seq.*)

Covenants by Lessee.

4. THE Lessor and also the Mortgagor, as to their own respective acts and deeds, but not further or otherwise, hereby

Covenants by Mortgagor and

(*f*) See *Re Lancashire & Yorkshire Bank* [1914], 1 Ch. 522; 83 L. J. Ch. 577.

(*g*) See notes to Forms Nos. 2 and 3, *supra*; this Precedent can be used where the statutory power is employed, in this case the mortgagor or mortgagee (as the case requires) will sign the name of the other as well as his own name.

Leases under statutory power of mortgagor or mortgagee.

Mortgagee for quiet enjoyment by Lessee.

respectively covenant with the Tenant that the Tenant paying the rent hereby reserved and observing and performing the Tenant's covenants herein contained, shall and may peaceably and quietly possess and enjoy the premises during the said term without any eviction or disturbance by the said covenanting parties respectively, or any person rightfully claiming from or under them respectively.

Until notice, rent may be paid to Mortgagor, and he may exercise rights and powers of Lessor.

5. PROVIDED that the Tenant shall pay the rent hereby reserved to the Mortgagor or other the person for the time being entitled to the ultimate right of redemption in the premises, until the Lessor shall by a notice in writing require the payment of the said rent to himself, and until such notice the Mortgagor or other the person entitled as aforesaid shall have the like remedy by distress for recovery of arrears of the said rent as he would have had if no incumbrance on his estate had been created,(*h*) and shall have and may exercise all the rights and powers hereby conferred on the Lessor.

IN WITNESS, &c.

No. V.

LEASE *of a* PUBLIC-HOUSE *by a* BREWERY COMPANY. (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN —— & Company, Limited, whose registered office is at, &c. (hereinafter called the Lessors, which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant on the term hereby granted), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him and his or their underlessees, whether or not immediate (*i*)), of the other part,

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(*h*) This clause will not be used where the lease is granted under the statutory power by a mortgagee. As to the mortgagor's remedies: L. P. Act, 1925, s. 98; the legal fee simple or head term will remain vested in him till the mortgagee exercises his power of sale or acquires it by foreclosure or long possession plus a mortgagee's vesting deed.

"Assigns" do not include "underlessees."

(*i*) As to the necessity of adding "underlessees": *Bryant* v. *Hancock & Co.* [1898], 1 Q. B. 716; [1899], A. C. 442; 67 L. J. Q. B. 507; 68 *ib.* 889; *John Bros., &c., Brewery Co.* v. *Holmes* [1900], 1 Ch. 188; 69 L. J. Ch. 149; *Wilson* v. *Twamley* [1904], 2 K. B. 99; 73 L. J. K. B. 703; see also *South of England Dairies* v. *Baker* [1906], 2 Ch. 631; 76 L. J. Ch. 78; *Mackusick* v. *Carmichael* [1917], 2 K. B. 581; 87 L. J. K. B. 65.

WITNESSETH, in consideration of the sum of £—— paid by the Tenant to the Lessors (the receipt of which sum the Lessors hereby acknowledge), and of the rent hereinafter reserved and of the covenants by the Tenant herein contained, and it is hereby declared as follows :—

Demise.

1. THE Lessors hereby demise unto the Tenant,

Parcels.

ALL THAT, &c. (*see Forms in Sect.* II, *Conv. on Sale*, *Vol.* I, *pp.* 471 *et seq.*).

Habendum.

TO HOLD unto the Tenant for the term of —— years from the —— day of ——, 19—,

Reddendum.

YIELDING AND PAYING therefor during the said term the yearly rent of £——, clear of all deductions (except in respect of landlord's property tax [land tax], tithe rentcharge,(*j*) and such deductions (if any) as the Tenant may be entitled to make in respect of charges imposed under the Licensing (Consolidation) Act, 1910 (*k*)), by four equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first of such quarterly payments to be made on the —— day of ——, 19—, and the

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(*j*) As to the method of ascertaining whether there is any increased rent payable in respect of the premises within the Fin. Act, 1912, s. 2 : *Procter* v. *Tarry* [1915], 2 K. B. 242 ; 84 L. J. K. B. 1096.

Licensing (Consolidation) Act, 1910.

(*k*) See the Licensing (Consolidation) Act, 1910, and Licensing Rules, 1904 (kept on foot by Licensing (Consolidation) Act, 1910, s. 112 (1)), which provide for the payment of compensation on the refusal of a licence, the compensation money being charged on the existing licences. S. 21 (3) enables the tenant to make the deductions (notwithstanding any agreement to the contrary) from the rent mentioned in the Second Part of the 3rd Schedule to the Act in respect of compensation charges : *L. C. C.* v. *Watney, Combe & Co.* [1909], 1 K. B. 637 ; 78 L. J. K. B. 421 ; *Lord Llangattock* v. *Watney, Combe and Co.* [1910], 1 K. B. 236; A. C. 394 ; 78 L. J. K. B. 233, 559 ; *Knight* v. *City of London Brewery* [1912], 1 K. B. 10 ; 81 L. J. K. B. 194. The words "notwithstanding any agreement to the contrary" include agreements made after the Licensing Act, 1904, came into force : *Wooler* v. *N. E. Breweries* [1910], 1 K. B. 247 ; 79 L. J. K. B. 138.

Abolition of *interesse termini*.

Though a reversionary term (formerly an *interesse termini*) has been converted into a legal term, no alteration is made, where the lease is granted before 1926, in the amount of the compensation or the proportions in which it is to be borne : L. P. Act, 1925, s. 149 (4) ; 1 Wolst. & Cherry, 11th ed., 394.

Income tax.

The tenant is entitled to deduct the income tax on the whole amount of rent payable under the lease, though he has deducted from the rent a proportion of the compensation charge : *Hancock* v. *Gillard* [1907], 1 K. B. 47 ; 76 L. J. K. B. 20.

Tenant for life.

If the lessor is a tenant for life he cannot, apart from express authority, have any of the deductions paid out of capital : *Re Smith* [1906], 1 Ch. 799 ; 75 L. J. Ch. 442.

Debenture trustees.

Compensation money paid in respect of the non-renewal of a licence of premises comprised in a debenture trust deed is payable to the debenture last of such payments to be made in advance on the —— day of ——, 19—, immediately preceding the expiration of the said term, together with the quarter's rent then due.

Covenants by Tenant.

2. THE Tenant, &c. (*continue as in sub-clauses* (1)—(6) *of clause* 2 *of Prec.* I *of this Section, pp.* 1046–47, *extending the fire insurance clause to fixtures, fittings, &c., and adding a covenant to insure glass windows and mirrors against damage or accident, and add the following sub-clauses*):

To use as a public-house.

(7) During the said term to use the premises hereby demised for the purpose only of a licensed victualling house, so long as the necessary licences can be obtained, and if such licences are refused at any time during the said term, not, without the previous consent in writing of the Lessors, to use or permit the premises to be used otherwise than as a private dwelling-house or flats (*l*) or for the purposes of a trade which, having regard to the character of the neighbourhood, shall not create a nuisance or become otherwise offensive to the neighbourhood; provided that no sale by auction of any description shall be held upon the premises:

To pay expenses of complying with any statutory or other provisions affecting the property.

(8) At his own cost to do all such acts and things as may from time to time during the said term be necessary for the purpose of complying with any statute for the time being in force, or any bye-law or order made or to be made by any local or other authority or justices, or otherwise in respect of the premises, and whether affecting the owner or occupier thereof:

Not to alter buildings.

(9) Not at any time during the said term, without the previous consent in writing of the Lessors, and also without the leave (so far as necessary) of the justices (*m*) or other proper authority,

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trustees: *Noakes* v. *N. & Co.* [1907], 1 Ch. 64; 76 L. J. Ch. 151; *Dawson* v. *Braime's Tadcaster Breweries* [1907], 2 Ch. 359; 76 L. J. Ch. 588; and as to mortgagees, see *Bent's Brewery Co.* v. *Dykes* (1909), 100 L. T. 476.

Apportionment of compensation money.

As to the manner of the apportionment of the compensation money between lessor and lessee, see *Liverpool Corpn.* v. *Walker* [1908], 2 K. B. 33; 77 L. J. K. B. 700.

(*l*) In the case of a lease for a short term the tenant ought not to be barred against trade after the licence is taken away, otherwise the tenant's compensation would be larger in amount and the lessor's smaller in consequence: *Ex p. Ashby's Cobham Brewery Co.* [1906], 2 K. B. 754; 75 L. J. K. B. 983; *Liverpool Corpn.* v. *Walker* [1908], 2 K. B. 33; 77 L. J. K. B. 700. The non-renewal of the licence does not determine the lease: *Grimsdick* v. *Sweetman* [1909], 2 K. B. 740; 78 L. J. K. B. 1162.

(*m*) See Licensing (Consolidation) Act, 1910, ss. 71, 72; *Coazens* v. *Smith* (1906), 50 Sol. J. 192; *Smith* v. *Portsmouth Justices* [1906], 2 K. B. 229; 75 L. J. K. B. 851; *cf. Cartwright* v. *Russell*, 56 Sol. J. 467; conversion of a to make any alteration in the elevation or structure of the premises hereby demised, or erect any other buildings on the premises:

To permit Lessors to take schedules of fixtures.

(10) To permit the Lessors or their agent at all reasonable times during the last five years of the said term to enter upon the premises for the purpose of taking schedules of the fixtures to be delivered up to the Lessors at the expiration of the said term:

Not to assign, &c.(*n*)

(11) (*Form No.* 23, *p.* 1032, *supra*:)

(12) (*As in sub-clause* (9) *of clause* 2, *Prec.* I *of this Section*, *p.* 1047.)

Covenants by Lessee.

3. The Tenant hereby further covenants with the Lessors in manner following (that is to say):

As to licences and conduct of business.

(1) That the Tenant and every other person who, as under-tenant,(*o*) manager or otherwise, shall for the time being be engaged in carrying on business upon the premises (in this clause called the Licensee) will at all times during the term hereby granted carry on the said business in a proper and orderly manner (*p*) and in all respects in accordance with the Licensing (Consolidation) Act, 1910, or other Acts for the time being in force relating to licensed premises, and will use his best endeavours to increase and extend the trade connexion thereof, and that nothing shall be done or suffered to be done at any time during the said term by the Licensee, by reason whereof the licences for using the premises as a public-house may, in the opinion of the Lessors or their agents, be liable to be forfeited or suspended or the renewal thereof withheld: (*q*)

Provided that the conviction of the Licensee of any offence under the said Acts shall be conclusive evidence of a breach of this covenant:

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house into flats may be a breach of this covenant: *Day* v. *Waldron*, 88 L. J. K. B. 937, but not advertising hoardings, &c., which can be easily removed, leaving the structure unaltered: *Joseph* v. *L. C. C.*, 111 L. T. 276. As to the power for the court to vary such a covenant, see Housing & Town Planning Act, 1919, s. 27; *Johnston* v. *Maconochie* [1921], 1 K. B. 239; 90 L. J. K. B. 83.

Variation of covenant.

(*n*) As to an assignment to a company where the tenant covenants to reside on the premises: *Jenkins* v. *Price* [1908], 1 Ch. 10; 77 L. J. Ch. 41.

(*o*) See cases cited in the first note to this Precedent.

Conduct.

(*p*) See *Bryant* v. *Hancock* [1899], A. C. 442; 68 L. J. Q. B. 889; *Palethorpe* v. *Home Brewery Co.* [1906], 2 K. B. 5; 75 L. J. K. B. 555.

Receiver.

(*q*) The owner of licensed premises has sufficient interest in the business to entitle him to the appointment of a receiver for the protection of the licences: *Leney* v. *Callingham* [1908], 1 K. B. 79; 77 L. J. K. B. 64.

To apply for new licences.

(2) That the Tenant and all other requisite parties will at all proper times during the term hereby granted apply for and endeavour to procure a renewal of or a new grant of the necessary licences for using and keeping the premises open as and for a public-house and tavern for the sale of beer, wine, and excisable liquors by retail:

To transfer licences at end of term.

(3) That the Tenant and all other requisite parties will at the expiration or sooner determination of the term hereby granted execute and do all necessary documents, acts and things for assigning and transferring the then existing licences of the premises to the persons appointed by the Lessors on payment only of a rateable proportion of the sum paid for the said licences:

[Where the house is to be "tied."]

[(4) That the Tenant will not at any time during the said term buy or receive or sell or dispose of, either directly or indirectly, or permit to be bought, received, sold or disposed of, either directly or indirectly, in or upon the premises any beer, ale, porter, stout or other malt liquors whatsoever other than such as shall have been purchased in good faith by the Tenant from the Lessors (*r*) [*or* from the said Company or their successors in business], provided that they be willing to supply the same to the Tenant at the fair market price: (*s*)]

[To insure licences.]

[(5) That the Tenant will (to the extent, if any, to which the loss may not be made good under the statutory provisions for compensation) insure and keep insured in the sum of £—— at least, all licences issued in respect of the premises, against loss occasioned by the withdrawal, non-renewal or forfeiture of the said licences, whether or not such loss is caused by the act or

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Tied house.

(*r*) If it is intended that the assigns of the company, whether carrying on the same business or not, shall have the benefit of this covenant, the words "the lessors" will be here used. If it is not so intended, the words in brackets should be substituted: *Clegg* v. *Hands* (1890), 44 Ch. D. 503; 59 L. J. Ch. 477; *Manchester Brewery Co.* v. *Coombs* [1901], 2 Ch. 608; 70 L. J. Ch. 814; *Birmingham Breweries* v. *Jameson* (1898), W. N. 15; 67 L. J. Ch. 403; and *cf. Kemp* v. *Baerselman* [1906], 2 K. B. 604; 75 L. J. K. B. 873. If the brewers are mortgagees in possession and the house is tied, they will be liable to be surcharged in the accounts the additional rent which they would have made if the premises had been let as a free house: *White* v. *City of London Brewery Co.* (1889), 42 Ch. D. 237; 58 L. J. Ch. 855.

Mortgagee's accounts.

"Market price."

(*s*) These words, if omitted, will be implied: *Luker* v. *Dennis* (1877), 7 Ch. D. 227; 47 L. J. Ch. 174; *Edwick* v. *Hawkes* (1881), 18 Ch. D. 199; 50 L. J. Ch. 577; *Courage* v. *Carpenter* [1910], 1 Ch. 262; 79 L. J. Ch. 184; for meaning of "fair market price": *Charrington* v. *Wooder* [1914], A. C. 71; 83 L. J. K. B. 220.

default of the Tenant, or by the non-renewal of the licence for redundancy, or from any other cause; such insurance to be effected in the joint names of the Lessors and Tenant in the —— insurance office or such other office as may be approved by the Lessors:

[To maintain policy.]

(6) That the Tenant will pay all premiums and other money necessary for maintaining the said policies within seven days after the same shall become due and will, whenever required, produce to the Lessors the policies of insurance and the receipts for the last premium:

Provided that if the said licences shall not be kept insured as aforesaid the Lessors may insure the same and pay the premiums, and the amount thereof shall be repaid by the Tenant, and in the meantime shall be a charge on the premises and be recoverable as rent in arrear:

[To account to Lessors.]

(7) The Tenant shall (in addition to any statutory compensation to which the Lessors may be entitled) cause all money received in respect of any such insurance to be paid to the Lessors.(*t*)]

Power of attorney to apply for licences, &c.

4. For the consideration aforesaid (and without prejudice to the rights of the Lessors under the covenants hereinbefore contained) the Tenant hereby irrevocably nominates and appoints the Lessors, or their substitutes or substitute, to be the attorneys or attorney of the Tenant for him and in his name from time to time to apply for and obtain the renewal or new grant of the magistrates' Excise and other licences in respect of the premises, and to recover and give receipts as agents (*u*) for the Tenant for any compensation money payable under the provisions of the Licensing (Consolidation) Act, 1910, or any amendment thereof, and at the expiration or sooner determination of the term hereby granted, to execute all proper notices and other

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Insurance of licences.

(*t*) Except in special cases, it is not necessary to insure licences, unless a covenant to insure a licence expressly covers non-renewal for redundancy, a lessee need not insure against this contingency: *Wootton* v. *Lichfield Breweries* [1916], 1 Ch. 44; 85 L. J. Ch. 94. The Licensing (Consolidation) Act, 1910, ss. 20 and 21, provide compensation for non-renewal of licences for redundancy, hence a covenant to insure against this contingency will not be required unless the loss occasioned thereby would exceed the amount recoverable under the statutory provisions.

Rights of lessee to compensation.

(*u*) Though, under the Licensing (Consolidation) Act, 1910, s. 20 (2), the tenant must take compensation at least on the footing of a tenancy from year to year, *semble* there is no objection to the lessors giving a receipt for the whole as agents.

documents, and give all consents and do all necessary acts and things whatsoever for assigning and transferring the licences to the nominees of the Lessors and for withdrawing the entry of the name of the Tenant from the books of the Excise in respect of the premises; And the production of this deed before any licensing authority shall be conclusive evidence as against the Tenant of his consent to any renewal, new grant or transfer being made, and of the right of the Lessors, as agents or otherwise, to receive any compensation payable to the Tenant.

Proviso for re-entry.

5. PROVIDED that if the yearly rent hereby reserved or any part thereof shall be in arrear for twenty-one days next after any of the days fixed for payment thereof (whether or not the same shall have been legally demanded), or if there shall be any breach of any of the covenants by the Tenant herein contained, or if the renewal of any licence of the premises shall be refused or prejudiced by reason of any act or default on the part of the Tenant or his manager or underlessee, or any person employed by him in conducting the said business, or if the Tenant shall become bankrupt or make any arrangement or composition with his creditors, then and in any of such cases the Lessors or any persons duly authorised by them may at any time thereafter into and upon the premises hereby demised or any part thereof in the name of the whole re-enter and the same have again, repossess and enjoy as in their former estate.

Quiet enjoyment.

6. THE Lessors, &c.(v) (*Form No.* 25, *p.* 1032, *supra.*)

IN WITNESS, &c.

Variation where lease determinable by Tenant.

(v) If the lease is made for twenty-one or fourteen years determinable at the end of the seventh or fourteenth year, use clause 4 of Prec. I of this Section, p. 1048, and add the following provision:—

"PROVIDED that for the purposes of Part II of the 3rd Schedule to the Licensing (Consolidation) Act, 1910, the term hereby granted shall be deemed to be a term of twenty-one [fourteen] years notwithstanding the foregoing power to determine the same, but if the said term shall be determined by the Tenant at the expiration of the seventh [or fourteenth] year, as hereinbefore provided, the Lessor shall refund to the Tenant a sum of money equivalent to the difference between the amount actually deducted by the Tenant during such seven [or fourteen] years and the amount which he would have been entitled to deduct had such deduction been based in the first instance on a lease for seven [or fourteen] years, [as the case may be]."

SECTION III.

BUILDING AGREEMENTS AND LEASES AND CONDITIONS OF LETTING BY AUCTION.

No. I.

AGREEMENT *for a* BUILDING LEASE *for the erection of* ONE HOUSE *for* NINE HUNDRED AND NINETY-NINE YEARS.(*w*) (*Equitable Interests.*)

Parties.

AN AGREEMENT, made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Owner, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Builder, which expression, where the context admits, includes the persons deriving title under him), of the other part:

WHEREBY IT IS AGREED as follows:—

Agreement to grant Lease.

1. IF and when the messuage and buildings hereinafter agreed to be erected by the Builder shall be completed so as to be fit for habitation and use [*or* shall be built and covered in] to the satisfaction of the Owner's surveyor, and such surveyor shall have given his certificate in writing to that effect, the Owner shall by a good and sufficient lease [underlease] demise unto the Builder,

ALL THAT piece of land (*describe it*) and the messuage and buildings to be erected thereon, for the term of nine hundred and ninety-nine years [*or a shorter term*] from the —— day of —— last, at the yearly rent of a peppercorn, if demanded, for the first year of the said term, and at the yearly rent of £—— during the residue thereof, payable quarterly on the —— day of ——,

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Agreements for building leases by fiduciary owners.

(*w*) As to matters affecting agreements for building leases by persons in a fiduciary position: S. L. Act, 1925, ss. 41 (i), 42, 43, 44, 46, 50 (surface and minerals), 51 (options), 55 (charitable or public purposes), 56 (dedication), 57 (small dwellings, &c.), 58 (arbitration), 59 (variation of leases), 63 (predecessors' contracts), 65 (mansion house), 73 (1) (xviii) (financing builders), 90 (contracts to grant leases), 110 (protection of lessees), 117 (1) (i) ("Building purposes"), 117 (1) (x) ("Lease" includes "agreement for lease"), 117 (1) (xxi) ("Purchaser" includes "lessee"); L. P. Act, 1925, s. 28 (powers of trustees for sale); Ad. of E. Act, 1925, s. 39 (powers of personal representatives); L. P. Act, 1925, s. 100 (mortgagors and mortgagees in possession or after appointment of receiver); L. R. Act, 1925, ss. 18 (1) (e), 21 (1) (d) (leases and underleases by registered proprietor), 104 (on behalf of registered proprietors), 107 (contracts by registered proprietors); and see generally as to leases the last preceding chapter.

Mortgagors and mortgagees.

Registered land.

"Estate contract."

A contract to grant a legal term may be protected by the registration of a land charge: L. C. Act, 1925, s. 10, Class C (iv); the charge will be registered against the name of the intending lessor.

Underleases.

For Precedent of an underlease at an improved ground rent, see Miscellaneous, p. 1197, *infra*, and notes thereto.

the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first of such quarterly payments to be made on the —— day of ——.

Provisions to be inserted in lease.

2. (1) The Lease [Underlease] shall contain covenants by the Builder—

Rent.

(i) To pay the said rent of £—— at the times and in manner aforesaid;

Lessee to pay rates and taxes, &c.

(ii) To pay (in addition to the rent) all taxes (including land tax and tithe rentcharge,(*x*) if any), rates, charges and assessments, whether parliamentary, parochial or of any other description, which during the term shall be charged, assessed, or imposed upon the premises or upon the owner or occupier in respect thereof (except landlord's property tax);

To repair.

(iii) To keep the said messuage and buildings in good and substantial repair and deliver the same up to the Owner at the end of the term in good and substantial repair;

To permit Lessor to view.

(iv) To permit the Owner or his agent to enter at all reasonable times twice or oftener in every year to view the condition of the premises and to make good all defects there found, within three months after notice;

To insure.

(v) To insure and keep insured the said buildings to at least three-fourths of the value thereof in the joint names of the Builder and Owner in one of the public fire insurance offices in London or elsewhere in England, or with agreed underwriters, and at all times, when required, to produce the policy of insurance, and the receipts of the premiums in respect of the same, to the Owner or his agent, and to cause any money received by virtue of any such insurance to be forthwith applied in reinstating the premises, and if the same shall be insufficient to make up the deficiency; (*y*)

To pay proportionate share of costs of making pavements, &c.

(vi) To pay a reasonable proportion towards the costs and expenses of making, supporting and repairing all pavements, fences, and party walls, sewers and drains, belonging to the premises, in common with other buildings or lands, such proportion to be ascertained by the surveyor of the Owner;

To permit Lessor to take schedule of landlord's fixtures.

(vii) To permit the Owner at any time during the last seven years of the said term to take a schedule of the landlord's fixtures.

Tithe rentcharge, "owner" liable to pay.

(*x*) As to tithe rentcharge, in the case of a long lease the tenant would appear to be the "owner" within the Tithe Act, 1891; see *Eastwood* v. *MacNab* [1914], 2 K. B. 361; 83 L. J. K. B. 941.

Insurance covenants.

(*y*) As to such covenants: *Enlayde* v. *Roberts* [1917], 1 Ch. 109; 86 L. J. Ch. 149; *Upjohn* v. *Hitchins* [1918], 2 K. B. 48; 87 L. J. K. B. 1205.

(2) THE Lease shall also contain—

(i) A condition for re-entry by the Owner on non-payment of rent for thirty days, or on breach of any of the Builder's covenants;

Quiet enjoyment.

(ii) A covenant by the Owner for quiet enjoyment by the Builder without any interruption from or by the Owner (personally) or persons rightfully claiming under him.

[Form of lease.]

[*Or* 2. THE Lease [Underlease] shall be in the form contained in the Schedule hereto, with such variations (if any) as the deaths of parties or other circumstances may render necessary.]

Lessee to erect messuage, &c.

3. THE Builder, shall at his own expense, in a substantial and workmanlike manner, with good materials, and under the inspection and to the satisfaction in all respects of the surveyor of the Owner, erect and build on the said land a brick [stone] messuage, with proper outbuildings, fences, drains and appurtenances, according to the specification hereto annexed [signed by the parties hereto], and will expend in and about such building the sum of £——, at least in labour and materials, to be reckoned according to the lowest current market prices, the said buildings to be covered in before the —— day of ——, 19—, and to be completed so as to be fit for habitation and use before the —— day of ——, 19—:

[Strike clause.]

[PROVIDED that if the Builder shall be prevented by a strike, lock out or combination of workmen from completing the said buildings within the time aforesaid, then and in such case he shall be allowed a reasonable extension of such time, and if the parties hereto shall be unable to agree as to what is a reasonable extension, the same shall be referred to arbitration [a single arbitrator] under the Arbitration Act, 1889.]

Power for Lessor to enter if Lessee fails to complete buildings.

4. IF the Builder shall fail to complete [*or* build and cover in] the said buildings within the time aforesaid or shall not proceed with the works with proper diligence, the Owner shall be at liberty to re-enter on the said land and resume possession thereof, with any building materials and chattels, and this agreement shall thereupon cease and be void.

Lessee to accept lease, execute counterpart, and pay costs. (z)

5. THE Builder (having accepted the Owner's title) shall at the time aforesaid accept a Lease [an Underlease] of the premises for the term, at the rent, and subject to the covenants and

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(z) Where it is intended that the intended lessee shall have the right to call for the lessor's title, the following clauses will be substituted in the above precedent for clauses 5 and 6:—

Intended Lessee to be

5. (1) BEFORE commencing operations under this agreement

conditions hereinbefore mentioned, [*or* in the form of lease [underlease] contained in the Schedule hereto], and shall execute a counterpart thereof, and pay the costs and expenses of and incidental to the preparation and execution of this agreement and the said lease [underlease] and the counterpart thereof.

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at liberty to examine.

Lessor's title from a certain date.

the Builder shall be at liberty to examine the Owner's title, such title to commence with a Conveyance on Sale dated (*date*) [Head Lease dated (*date*)], and an abstract of the said title shall be delivered to the Builder or his solicitor within seven days from the date of this agreement:

Abstract.

Time for sending in requisitions, &c.

(2) The Builder shall send to the Owner or his solicitor his objections and requisitions in respect of the title or the abstract within fourteen days from the receipt of the abstract, and, subject to such objections and requisitions, shall be deemed to have accepted the title:

Power to Lessor to rescind in case of objections.

(3) If any objection or requisition shall be made which the Owner shall be unable or unwilling to remove or comply with, he shall be at liberty to rescind this agreement by giving to the Builder a notice in writing to that effect, in which case the Builder shall have no claim for compensation or costs:

Costs to be borne by Lessee.

(4) All expenses connected with the verification of the title, which in case of a sale are, in the absence of any stipulation to the contrary, payable by a purchaser, shall be payable by the Builder.

(5) Subject as aforesaid, the General Conditions of 1925 shall apply as if the intended transaction were a sale.

Lessee to execute counterpart, and pay costs.

6. SUBJECT to the last preceding clause the Builder shall at the time aforesaid accept a lease [an underlease] of the premises [in the form of lease [underlease] in the Schedule hereto, *or*] at the rent and subject to the covenants and conditions hereinbefore mentioned, and shall execute a counterpart thereof, and pay the costs and expenses attending the preparation and execution of this agreement, and the said lease [underlease] and the counterpart thereof.

Prudence of obtaining official certificate of search.

In the absence of stipulation, an intending lessee (exclusive of a sub-lessee) is not entitled to call for the lessor's title: L. P. Act, 1925, s. 44 (2), (4), (5); 1 Wolst. & Cherry, 11th ed., 201-203. When, therefore, he contemplates a large outlay, it will be prudent for him to stipulate for the production of some title on the lessor's part and to obtain an official certificate of search against the name of the lessor, &c., for though the doctrine of constructive notice under *Patman* v. *Harland* (1881), 17 Ch. D. 353; 50 L. J. Ch. 642, has been abolished, this would not: *ib.*, s. 198, prevent his having notice of restrictive covenants made after 1925, and registered under L. C. Act, 1925, s. 10, Class D (ii).

Costs.

There is nothing in L. P. Act, 1925, s. 48, to prevent the lessor requiring the costs of the lease and counterpart to be borne by the lessee in the case

6. IN the meantime and until a lease [underlease] shall be granted, the Builder shall be deemed a tenant at will of the said land at the rent aforesaid, and subject to the same obligations as if the lease [underlease] had been actually granted. Position of intended Lessee until lease granted.

7. THE Builder shall not (except by way of mortgage) assign the benefit of this agreement without the consent in writing of the Owner. Not to assign without licence.

AS WITNESS, &c. [*Add Schedule of Form of Lease or Underlease if used.*]

No. II.

AGREEMENT *for a* LEASE *for* NINE HUNDRED AND NINETY-NINE YEARS *of* LAND *on which* SEVERAL DWELLING-HOUSES *are agreed to be* BUILT. SPECIAL PROVISIONS *enabling the Builder to have* SEPARATE LEASES *of the* SEVERAL HOUSES *and to* APPORTION *the* RENT.(*a*) (*Equitable Interest.*)

AN AGREEMENT, made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Owner, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Builder, which expression, where the context admits, includes the persons deriving title under him), of the other part : Parties.

WHEREBY IT IS AGREED as follows :—

1. IF and when the six messuages hereinafter agreed to be erected shall be completely finished and made fit for habitation, occupation and use, to the satisfaction of the architect or surveyor for the time being of the Owner, and such architect or surveyor shall have granted his certificate in writing to that effect, the Owner shall, by one or more good and sufficient leases [underleases], demise to the Builder [or his nominees], Agreement to grant lease or leases.

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in the text, nor would it make any difference if a fine were charged. In that Act, "sale" means a sale properly so called : *ib.*, s. 205 (1) (xxiv) ; the section (s. 48) applies to a demise or sub-demise where a sale is effected thereby : *ib.*, s. 48 (3).

(*a*) See notes to last Precedent. As to apportionment of rents and covenants : S. L. Act, 1925, ss. 44 (3), 60 ; L. P. Act, 1925, s. 28 ; Ad. of E. Act, 1925, s. 39. Apportionment of rents.

Under S. L. Act, 1925, s. 44 (3), the rent must not be less than 10*s.* in a building lease where the money rent is apportioned ; the total amount of the rents reserved by the several leases must together amount to the best rent that can reasonably be obtained. The rent reserved by a building lease must not exceed a fifth part of the annual value of the land and buildings when the latter are completed. A peppercorn rent, &c., may be reserved during the first five years : *ib.*, s. 44 (2). Regulations as to building leases.

ALL THAT piece of land (*describing it*), and the messuages and buildings to be erected thereon for the term of nine hundred and ninety-nine years [*or a shorter term*] from the —— day of ——, at the yearly rent of one peppercorn if demanded for the first year of the said term, the rent of £—— for the second year thereof, and the rent of £—— for the third and every subsequent year of the said term, such rent to be payable quarterly on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first of such quarterly payments to be made on the —— day of ——.

Form of lease.

2. EVERY lease [underlease] shall be in the form contained in the Schedule hereto with such variations as the deaths of the parties and other circumstances may render necessary.

Lessee may have either one lease or separate leases.

3. THE Builder shall at his option have either one lease [underlease] of all the said six dwelling-houses to be erected as aforesaid, or separate leases [underleases] of any one or more thereof, and in case of separate leases [underleases] the said rent shall be rateably apportioned between the premises to be comprised in each lease [underlease] the amount of such apportioned rents respectively to be fixed and ascertained by the architect or surveyor for the time being of the Owner.

Lessee to erect houses.

4. THE Builder shall on or before the —— day of ——, 19—, erect, cover in, and complete, fit for habitation and use, upon the said land, in a good, substantial, and workmanlike manner, with fit and proper materials, to be approved of by the architect or surveyor for the time being of the Owner, and under his direction and inspection, and according to a plan. elevation, and detail drawings thereof, which have been signed by the parties hereto, and a copy whereof has been deposited with the said architect or surveyor, six brick-built and tiled dwelling-houses [adapted for use as flats], with the areas, forecourts, iron railings, gates, and garden walls, and other appurtenances thereto belonging, and will expend in the erection of each of the said houses the sum of £—— at least in labour, and materials alone to be reckoned at the lowest current market prices.

[5. *Strike clause, No.* 3 *of last Precedent.*]

[6. *Power for owner to re-enter, clause* 4 *of last Precedent.*]

Lessee to accept lease or leases.

7. THE Builder shall accept a lease or leases [an underlease or underleases] of the premises for the term, at the rent or apportioned rents aforesaid, and subject to the covenants and conditions referred to in the Schedule hereto, and shall execute a counterpart of every such lease [underlease], and pay the costs

and expenses of and incidental to the preparation and execution of this agreement, and of every such lease [underlease] and counterpart.(*b*)

Position of Lessee until lease.

8. Until leases [underleases] shall have been granted as aforesaid, the Builder shall be deemed to be tenant at will of the said land or of such part thereof as shall remain unleased, at the rent and subject to the same obligations as if a lease [underlease] thereof had been actually granted.

Not to assign without licence.

9. The Builder shall not (*continue clause 7 of last Precedent*).

As witness, &c.

The Schedule.

(*Form of Lease or Underlease.*)

No. III.

LEASE *of an* UNFINISHED House *to a* Builder *or his* Nominee. Covenant *by* Lessee *to* COMPLETE *the* House, *and other* USUAL Covenants.(*c*) (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made, &c. (*parties as in Form No.* 1, *p.* 1014),

WITNESSETH, in consideration of the rent hereinafter reserved, and of the covenants by the Tenant herein contained, and it is hereby declared as follows :—

Demise.

1. The Lessor hereby demises unto the Tenant,

(*b*) If the lessor is to show his title, or the title has not already been investigated, the alternative clauses at the foot of the last Precedent should be introduced instead of clauses 7 and 8.

Variations for lease not by an absolute owner.

(*c*) If the lease is not made by an absolute owner one of the Forms in Sect. I, pp. 1014–26, suited to the case, should be adopted as a variation of the above Precedent. For Special Precedents of underleases see "Miscellaneous," pp. 1194–99 *infra*.

Compulsory areas.

If the property is in a district where registration is compulsory on sale under the L. R. Act, 1925, ss. 120 and 121, the lessee or his assign must procure himself to be registered as proprietor, within two months from the date of the lease or within an authorised extension, otherwise the lease will not create a legal term.

Registration of title to leases.

This provision must not be confused with the liability to register a lease (*e.g.*, granted for more than twenty-one years), granted by the proprietor, of land the title to which is already registered, under *ib.*, ss. 18 to 21 ; for these are "registered dispositions," and until the registration of the title to the lease is effected the lessor remains the proprietor unaffected by the lease. It is not sufficient merely to register the title to such a lease but notice thereof must be entered against the lessor's title under *ib.*, s. 48.

Parcels.

ALL THAT, &c. (*see Forms in Sect.* II, *Conv. on Sale, Vol.* I, *pp.* 471, *et seq.*),

TOGETHER WITH the messuage and buildings now in course of erection thereon,(*d*)

Habendum.

TO HOLD unto the Tenant from the —— day of —— last, for the term of ninety-nine [nine hundred and ninety-nine] years thence next ensuing,

Reddendum.

YIELDING AND PAYING therefor for the first year of the said term the rent of a peppercorn, if demanded, and, during the residue of the said term, the yearly rent of £——, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first of such quarterly payments to be made on the —— day of ——.

Lessee's covenants.

2. THE Tenant hereby covenants with the Lessor in manner following (that is to say)—

To pay rent, rates, &c.

(1) and (2) (*Form No.* 21, *p.* 1029, *supra, excluding the words in square brackets and, if desired, imposing on the tenant the liability for payment of rates and taxes, other than landlord's property tax*) :

To complete house.

(3) Within —— months from the date hereof, in a good, substantial and workmanlike manner, and to the satisfaction of the Lessor or his surveyor, to complete, so as to be fit for habitation and use, the messuage and buildings now in course of erection on the said land ; And after the completion of the said messuage and buildings to keep the same at all times during the said term in good and substantial repair and condition, and the same in good and substantial repair and condition to deliver up to the Lessor at the expiration or sooner determination of the said term :

To keep same in repair.

To deliver up in repair at end of term.

(4) and (4A) (*Covenants to paint, &c., outside and inside, and to contribute to repairs of party walls, &c., as in Prec.* I, *Sect.* II, *pp.* 1046–47) :

To permit Lessor to view, &c.

(5) (*To permit Lessor to view, and to repair after notice of defect, as in Prec.* I, *Sect.* II, *p.* 1047) :

To take schedule of fixtures during last seven years.

(6) To permit the Lessor or his agent to enter into and upon the premises at any time during the last seven years of the said term to take a schedule of the landlord's fixtures :

To insure.

(7) Upon the completion of the said messuage and buildings to insure the same against fire to at least two-thirds of the value

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(*d*) Add here, if necessary, "right to use road," as in Form No. 14, p. 1027. Add also, where the lessor owns adjoining land, Form No. 17A, p. 1028.

thereof in the joint names of the Lessor and Tenant, and either in conjunction or not with the names of any underlessees, or other persons interested therein, in the —— Insurance Office, or some other well-established office to be approved by the Lessor or with approved underwriters and will keep the same so insured, and to pay, &c. (*to pay premiums, to produce policy and receipts for premiums, and to lay out insurance money in rebuilding and make up the deficiency, if any. Continue Form No.* 22, *p.* 1031, *supra*):

Lessee to use messuage only as a dwelling-house.

(8) Not, without the consent in writing of the Lessor, to exercise or carry on or permit or suffer to be exercised or carried on upon any part of the premises hereby demised, any trade or business whatsoever, but to keep the said messuage and premises strictly as a private dwelling-house, or for use as flats [or for the professional purposes of a doctor, dentist, surgeon or architect]:(*e*)

[To make no structural alteration.]

[(9) Not without such consent as aforesaid to make any structural alteration of the said messuage or buildings:(*e*)]

To give notice of assignments, &c., to Lessor's solicitors.(*f*)

(10) Upon every assignment or devolution of the demised premises, or any part thereof, within one month after the assignment or devolution to give to the Lessor's solicitors notice in writing thereof, specifying in such notice the name and address of the assignee or personal representative or other person in whom the term or any part thereof may have become vested, and to produce the assignment, probate, letters of administration or other evidence of devolution at the office of the said solicitors for registration, and in order that they may place and sign thereon a memorandum of such registration, and to pay to the said solicitors a fee of £—— for such registration.(*g*)

Flats.

(*e*) It is a breach of covenant for the tenant to convert the house into flats, unless so authorised: *Day* v. *Waldron,* 88 L. J. K. B. 937; the erection of advertisement hoardings is not a breach of this covenant: *Joseph* v. *L. C. C.*, 111 L. T. 276. As to the powers of the court to vary the terms of such covenants: Housing Act, 1919, s. 27; *Johnston* v. *Maconochie* [1921], 1 K. B. 239; 90 L. J. K. B. 83.

Registration of assignments, &c., with Lessor's solicitors where the title is registered.

(*f*) Where the lessor's title is registered, no endorsement on the land or charge certificate will be made by the lessor's solicitors, under a covenant to register assignments, &c.; such an endorsement if made, is void: L. R. Rules, 1925, r. 91 (2). Instead, the transfer or charge will be produced or a copy thereof, and this will be endorsed: *ib.*, r. 91 (1). But if the transfer or charge has already been registered, then the land or charge certificate will be produced with the lease, and the latter will be endorsed: *ib.* Where probates or letters of administration have to be produced and endorsed, this can be done though the title has been registered.

Implied covenant to

(*g*) Compare L. P. Act, 1922, 15th Sch., para. 10 (1) (ii), for the covenant,

3. (*Proviso for re-entry on non-payment of rent or breach of covenant, Prec.* I, *Sect.* II, *p.* 1047.)

[4. *Covenant by Lessor for quiet enjoyment, Form No.* 25, *p.* 1032, *supra.*]

IN WITNESS, &c.

No. IV.

AGREEMENT *to grant a* LEASE *of a* SITE *for the erection of* OFFICES *and* FLATS. (*Equitable Interest.*)

Parties.

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and the —— Company, Limited, whose registered office is at —— (hereinafter called the Tenants, which expression, where the context so admits, includes the persons deriving title under them), by their Agent R. A., of, &c.,(*h*) of the other part: WHEREBY, in consideration of the rents hereinafter reserved and of the covenants by the Tenants herein contained and of the deposit hereinafter mentioned, IT IS AGREED as follows:—

Agreement to grant lease in form in schedule.

1. (1) THE Lessor shall grant to the Tenants or to such persons as they shall direct, and subject to the provisions hereinafter contained, a Lease or Leases [an Underlease or Underleases] of

ALL THAT, &c. (*refer to First Schedule and see Forms in Sect.* II, *Conv. on Sale, Vol.* I, *pp.* 471, *et seq.*), for a term of —— years from the —— day of ——, 19—, at the yearly rent of £—— for the first —— years of the said term, and at the yearly rent of £—— for every subsequent year thereof payable on the usual quarter days without any deductions (except in respect of landlord's property tax), such lease or leases [underlease or underleases] to be in the form of lease [underlease] contained in the Second Schedule hereto:

Form to be varied if

(2) If more than one lease [underlease] is granted such variations

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register assignments, &c.

implied in leases and underleases (formerly perpetually renewable) which have been converted into long terms.

Execution of documents by agents for corporations, &c.

(*h*) As to the execution of instruments by or on behalf of corporations: L. P. Act, 1925, s. 74; 1 Wolst. & Cherry, 11th ed., 247–9. The board, &c., may by resolution or otherwise appoint an agent, either generally or in any particular case, to execute on behalf of the corporation any instrument not under seal. The section also authorises an attorney to sign the name of the corporation in the case of a conveyance, and to affix his own seal. A corporation can also act as attorney for an individual by appointing an officer: *ib.*

in the parcels shall be made as may be rendered necessary by reason of that fact, and the amount at which the premises comprised in such lease [underlease] are to be insured shall be inserted according to the certificate of the Lessor's surveyor, and each lease [underlease] shall include such part of the premises as the Tenants shall require, and the Tenants may determine the number of leases [underleases] to be granted, which shall not, however, exceed ——, And if more than one lease [underlease] is granted the rent shall be apportioned according to the value of the sites respectively comprised in such leases [underleases], and if any question arises as to the value of the sites the same shall be decided by the Lessor's surveyor, whose decision shall be final.

more than one lease granted and rents apportioned.

2. AFTER the execution hereof the Lessor shall forthwith give valid notices to determine the tenancies of the whole of the premises, so that possession of the whole shall be given to the Tenants on or before the —— day of ——, 19—.

Notice to determine tenancies.

3. (1) IMMEDIATELY after the execution hereof the Tenants shall at their own cost make a proper survey of the buildings now erected on the site of the premises and shall complete the same, with proper plans thereof, on or before the —— day of ——, 19—, and shall (if required) submit such plans to the surveyor of the Local Authority, to be certified under the provisions of the Building Acts applicable thereto, and shall deposit a copy of such certified plans with the Lessor's surveyor:

Survey to be made of existing buildings.

(2) The Tenants shall at their own cost obtain from the requisite Local Authorities official certificates of the result of search in regard to local land charges, and shall produce such certificate to the Lessor.(*i*)

Local land charges.

4. WITHIN —— months after possession of the premises shall have been given to the Tenants they shall pull down and clear away the buildings now standing on the site, and shall erect all hoardings which may be necessary or desirable in the opinion of the Lessor's surveyor, and pay all fees, rates and taxes in connexion therewith, and also shall effect all necessary shorings and shall at all times keep the Lessor indemnified from all liability in respect of such demolition and works.

Demolition of buildings.

(*i*) As to local land charges, see L. C. Act, 1925, s. 15, as amended by L. P. (Amend.) Act, 1926, Sch.; 1 Wolst. & Cherry, 11th ed., 590–3; until 1st January, 1927, the old enquiries as to town planning schemes and other local charges will have to be made in regard to charges arising before 1st January, 1926, for the registers will not be complete till 1927: *ib.*, s. 15 (5).

Local land charges.

Submission of plans.

5. (1) On or before the —— day of ——, 19—, the Tenants shall submit to the Lessor's surveyor the plans, drawings, sections, elevations and specifications of the buildings proposed to be erected on the said site, and such surveyor shall forthwith examine the same and (subject to such alterations as he may reasonably require) approve the same:

Description of buildings.

(2) The said buildings shall be made suitable for offices on the ground floor with flats above, and the elevations fronting on —— Street shall be executed in stone or some other material approved by the said surveyor:

Plans, &c., to be altered when required.

(3) The said plans, drawings, sections and elevations shall without unnecessary delay be so altered and rearranged, and the specifications shall be so varied, as may be necessary to obtain the approval of the Lessor's surveyor, as well as the approval (when necessary) of the Local or other Authorities:

Works to be commenced after obtaining approval of plans.

(4) After obtaining the approval aforesaid the Tenants shall forthwith proceed with the erection of the buildings upon the said site, and such buildings shall be erected and carried out in new materials of first-class quality and in a good and workmanlike manner in accordance in every respect with the said plans, elevations, sections and specifications as so approved, and with any Building Acts and bye-laws applicable thereto, and the Tenants shall expend exclusively upon the erection of the new buildings (without regard to the cost of excavating the foundations, erecting hoardings, and other incidental matters) a sum equal to at least —— per foot cube [*or* a sum of not less than £——in labour and materials reckoned at the lowest current market prices, exclusive of architect's fees].

Foundations to be excavated.

6. The Tenants shall effect all excavations necessary for the foundations, but shall not remove any sand or ballast from the site (except such as may be necessary in connexion with the foundations), And any antiquities found on the site shall, subject to the rights (if any) of the Crown, belong to the Lessor and be delivered to his surveyor.

Times for completion of works.

7. (1) The buildings shall be entirely roofed in (with all necessary gutters and stack pipes), and all drains and sewers finished, and the entire carcase erected within —— months after the Tenants shall have been given possession of the premises:

(2) The buildings shall be finished according to the approved plans and specifications to the satisfaction of the Lessor's surveyor, fit for occupation (except partitions and alterations

for occupiers), within —— months from the time when the carcase has to be erected :

(3) If the completion of the said works shall be delayed by reason of fire or climatic conditions, strikes,(j) lock-outs,(k) or other like causes (not arising on account of the acts or defaults of the Tenants), such extension of time for completion of the said works shall be allowed as the surveyor of the Lessor shall authorise in writing as being reasonable.

Strike clause.

8. THE Tenants shall for the purposes hereof give all necessary and usual notices under any Building or other Acts or bye-laws affecting the said works, and shall also give notices to all Water Boards, Gas and Electric Light and Power Companies, or other authorities as may be necessary, and pay all costs, fees and outgoings incidental to any such notice.

Notices under Building Acts, &c.

9. THE Lessor and the persons authorised by him may at any time enter upon the premises for the purpose of viewing the state and progress of the said works and of inspecting the materials used therein.

Power for Lessor to view.

10. THE Lessor's surveyor may in writing from time to time direct the re-execution of any works which in his opinion may be defective and the removal from the works of any materials which in his opinion are not in accordance with the approved specification within such reasonable times as he may think proper and the substitution of other materials and workmanship in accordance with the approved specification, and thereupon the Tenants shall give effect to any such directions within such reasonable times as the said surveyor may prescribe.

Power to require defective works to be re-executed.

11. THE Tenants shall, when required by the Lessor's surveyor, furnish to him such evidence that the materials used or to be used in the said works are of the quality hereby prescribed.

Evidence of user of proper materials.

12. THE Tenants shall not cover up any foundations for walls, piers, stanchions, columns, drains or other works until such foundations have been inspected and approved by the Lessor's surveyor, who shall (within ten days from the receipt of a written notice requiring him to do so) inspect the same, and if any foundation shall be so covered up before the same has been finally approved, then the same shall be exposed by the Tenants, if so required by the Lessor's surveyor, within at least —— days after such requisition has been made.

Not to cover up foundations till inspected.

(j) See *Stephens* v. *Harris* (1887), 57 L. T. 618 ; 57 L. J. Q. B. 203.

(k) See *Re Richardsons and Samuel* [1898], 1 Q. B. 261 ; 66 L. J. Q. B. 868.

Defects to be made good.

13. ANY defects or other faults discovered within —— months from the actual time of the completion of the works, and which in the opinion of the Lessor's surveyor are the result of defective or inferior materials or workmanship being employed, shall within such time as such surveyor may direct be made good by the Tenants at their own cost to the satisfaction of the said surveyor.

Tenants' deposit.

14. THE Tenants shall on or before the —— day of ——, 19—, deposit with Messrs. —— (*bankers*), of ——, in the joint names of the Tenants and the Lessor as security for the erection and due completion of the said works, the sum of £——, which shall be in all respects at the risk of the Tenants, but the interest on the deposit shall (subject as hereinafter provided) be paid to the Tenants.

Payment out of deposit.

15. THE Tenants shall (subject as hereinafter provided), if they shall by not less than —— days' notice in writing to the Lessor so require it, be entitled to repayment by instalments of the said deposit as the works proceed, in accordance with the certificates from time to time granted by the Lessor's surveyor [in the events mentioned in the Second Schedule hereto].

Not to make structural alterations.

16. THE Tenants shall not at any time during the term hereby agreed to be granted erect or build or permit to be erected or built upon any part of the premises any building or erection not in accordance with the approved plans and elevations and specifications, nor make any structural alterations, whether in the external elevation or internal arrangement or of any other nature, in respect of the said buildings and works, or any of them, without the previous consent in writing of the Lessor's surveyor, but such consent shall not be unreasonably withheld in any proper case.

Demolished materials to belong to Tenants.

17. THE materials of the existing buildings and erections shall (subject as aforesaid) belong to the Tenants, but no old material is to be used in the new buildings or works except with the consent in writing of the Lessor's surveyor.

Building Acts, &c., to be complied with.(*l*)

18. IN the execution of the said works (including the pulling down of the old buildings, the excavation of the site, and the erection of hoardings) the Tenants shall at their own cost comply in all respects with all Building and other Acts and the bye-laws

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(*l*) See the London Building Acts, 1894, 1898 and 1905, and *Rea* v. *L. C. C.* [1911], 1 K. B. 740; 80 L. J. K. B. 704.

of the Local and other Authorities [including the Metropolitan Water Board], and obtain all necessary licences and pay all such sums as may be incurred in connexion with the said works (including all surveyors' fees and other charges and expenses of every description), and shall keep the Lessor indemnified against the same.

Not to assign or underlet.

19. UNTIL the said lease or leases [underlease or underleases] shall have been executed the Tenants shall not assign or otherwise deal with the benefit of this agreement without the previous consent in writing of the Lessor, but such consent shall not be unreasonably withheld in the case of a respectable and responsible person and shall not be required in the case of a mortgage.

Indemnity in regard to neighbouring owners and as to rights to light.

20. (1) THE Tenants shall keep indemnified the Lessor from all liability to any adjoining or neighbouring owner, tenant or occupier, or other person whatsoever which may be incurred by reason of the execution of the works aforesaid (including the pulling down of the old buildings or any of them) and from all proceedings, costs, claims and demands in respect of any such liability or alleged liability:

(2) Such indemnity shall not be determined by the execution of any lease [underlease] of the premises or any part thereof:

(3) The Tenants shall at their own cost make such arrangements with any adjoining or neighbouring owner or occupier with respect to any ancient lights or alleged rights to light which might interfere with the erection of the said buildings and works as the Lessor may from time to time approve.

Provisions for forfeiture of deposit in case of default and for re-entry.

21. (1) IF the Tenants shall make default in erecting, covering in and finishing the said buildings and works (except partitions and decorations for occupiers) and making the same fit for occupation within the respective times hereinbefore fixed for those purposes or any authorised extension thereof according to the provisions hereinbefore contained, or if there shall be any breach of any of the agreements to be performed or observed by the Tenants, or if any event happens whereby if the said lease or leases [underlease or underleases] had been actually granted the Lessor would be entitled to re-enter upon the premises under the powers therein contained, then and in any such case, unless the premises shall be erected, covered in or completely finished and made fit for occupation (except as aforesaid) according to the provisions hereinbefore contained, or unless the breach of any agreement or provision shall be remedied (as the case may

be) within —— months after notice in writing to the Tenants of any matters required to be done or remedied shall be given, or within such extended period as the Lessor's surveyor shall certify to be reasonable, this agreement shall at the expiration of such period, at the option of the Lessor, determine:

(2) In that case—

(i) The deposit or the balance thereof shall be forfeited to the Lessor, who shall be entitled to have the same paid to him by way of liquidated damages;

(ii) The Lessor may resume possession of the premises (or of so much thereof as shall not be included in any lease [underlease] then actually granted), together with all buildings and erections, materials, plant and things thereon, without making to the Tenants any allowance for the same;

(iii) The Lessor may use all contractor's plant on the premises until completion of the works or may require the same to be removed;

(iv) If the said plant shall not be removed within —— days after notice to the Tenants by the Lessor so to do, the same shall become the absolute property of the Lessor.

As to specific performance.

22. Provided, that in case any such default as aforesaid shall be made in erecting, covering in, or completing the said buildings and works within the respective periods aforesaid and the Lessor shall elect to enforce the specific performance of this agreement, he shall be entitled to fix in writing such extended period or periods for the erecting, covering in and completing of the said buildings and works respectively as he shall think fit, and in such case this agreement shall be read and have effect as if the period or periods so fixed had been originally inserted therein instead of the period or periods hereinbefore fixed for that purpose.

As to the grant of the leases.

23. (1) If and when the respective buildings to be comprised in each lease [underlease] shall have been entirely finished in carcase and roofed in (with all proper gutters and stack pipes) and all drains and sewers finished and all staircases erected and completed, and a certificate to that effect signed by the Lessor's surveyor shall have been produced to the Lessor, the Lessor shall grant and the Tenants (or their nominees) shall accept a lease or leases thereof, and the Tenants shall execute a counterpart of every such lease:

(2) The leases [underleases] and counterparts shall be prepared by the solicitors of the Lessor in accordance (as nearly

as the circumstances admit) with the form contained in the Third Schedule hereto, and the Tenants shall not require any evidence of the title of the Lessor to grant any lease [underlease], the title having already been sufficiently investigated and official certificates of search having been obtained.

Insurance.

24. The Tenants shall during the erection of the said buildings, and until the lease or leases [underlease or underleases] shall be granted, keep the buildings, whether completed or not, insured against fire in the —— Insurance Company [or with Underwriters approved by the Lessor] to the full building value thereof in the joint names of the Lessor and the Tenants, and shall keep the same when completed so insured until the lease or leases [underlease or underleases] shall be granted, and shall upon request deposit with the Lessor every policy and receipt for the last premium of every such insurance, and in case of damage or destruction by fire shall forthwith lay out (*continue, with adaptations, as in Form No.* 22, *p.* 1031, *supra*).

Tenants to be subject to the same obligations as if leases had been granted.

25. (1) Until the lease or leases [underlease or underleases] shall have been actually granted the Tenants shall be deemed to be tenants at will of the Lessor at the rent agreed to be thereby reserved or at such part thereof as shall not be reserved by any lease [underlease] actually granted, and the said rent and all rates and taxes, charges, duties, assessments and other outgoings whatsoever which may be assessed, charged or imposed upon or become payable in respect of the premises shall be paid by the Tenants, and all covenants, conditions and provisions on their part agreed to be contained in any such lease or leases [underlease or underleases] shall (so far as the same may be applicable) be performed by the Tenants in like manner as if a lease or leases [an underlease or underleases] of the whole premises had been actually granted, and the Lessor may distrain for rent in arrear and exercise all such powers and remedies in respect of any breach of the Tenants' covenants or of the said conditions and provisions as if the said lease or leases [underlease or underleases] had been actually granted:

(2) Provided, that for the purposes of the Tithe Act, 1891, and all Building Acts and bye-laws thereunder, and of giving and receiving notices respecting party walls and other like matters, the Tenants shall be deemed to be the owners of the premises.

Appeals from the "Lessor's surveyor,"

26. (1) If any dispute arises between the Lessor and the Tenants as to whether the Lessor's surveyor is (where so required

except where he has an absolute discretion.

by this agreement) acting reasonably or is otherwise acting within the powers hereby conferred on him, then every such dispute shall be referred to the arbitration of the President for the time being of the Institute of British Architects or of his nominee, whose decision shall be final:

(2) If the President or any member of his firm is professionally employed in connexion with this agreement, then the Vice-President shall for the purposes of this clause act in his place:

(3) Provided that the Lessor's surveyor shall have power at his absolute discretion to grant or refuse any application for the alteration of the approved plans, drawings, sections and specifications, or for the repayment of any part of the Tenants' deposit, and to give or refuse any certificate in relation to the premises:

(4) The expression "Lessor's surveyor" means the surveyor for the time being of the Lessor.

Payment of fees and costs.

27. THE fees of the Lessor's surveyor (not exceeding the sum of £——) and the costs of and incidental to the preparation and execution of this agreement and of the preparation and execution of the said leases [underleases] and the counterparts thereof (in addition to the stamps and outgoings which are also to be paid by the Tenants), not exceeding the sum of £——, shall be borne and paid by the Tenants as follows:—

(1) As to the said surveyor's fees—
  (a) The sum of £—— on the approval of the plans;
  (b) The sum of £—— on certifying for the lease or leases [underlease or underleases] (proportionately according to whether there are one or more);
  (c) £— per cent. on the amount of the deposit from time to time certified to be repaid to the Tenants;

(2) As to the said costs—
  (a) The sum of £—— and all stamps and outgoings to date on the signing of this agreement;
  (b) The sum of £—— and all stamps and outgoings to date not previously paid wholly or proportionately on the granting of the said lease or leases [underlease or underleases], as the case may be.

AS WITNESS, &c. (*Add Schedules of description of property, the events in which parts of the deposit are to be repaid, and form of lease or underlease. The Tenants may register a land charge under L. C. Act,* 1925, *s.* 10, *Class* C (iv).)

No. V.

DEED *of* VARIATION *for extending the time for the* PERFORMANCE *of a* COVENANT *in a* LEASE *to complete* BUILDINGS. (*Legal Estate.*)(*m*)

THIS VARIATION DEED, made (*date*), BETWEEN the within-named A. B. (hereinafter called the Lessor), of the one part, and the within-named C. D. (hereinafter called the Tenant), of the other part: Parties.

WHEREAS the Tenant has failed to perform the covenant on his part contained in the within-written Lease for the erection and completion before the —— day of ——, of a good and substantial messuage on each of the three plots of ground comprised in the said lease, and has requested the Lessor to extend the time for the erection and completion thereof to the —— day of ——, which the Lessor has agreed to do: Tenant has failed to perform covenant to build three messuages within a given time.

NOW THIS DEED WITNESSETH, and it is hereby declared, that the covenant contained in the said Lease for the erection and completion of three messuages on the plots of land thereby demised, and all other the provisions contained in that Lease, shall be read and have effect as if the —— day of ——, 19—, had been the time fixed by the said Lease for the completion of the said messuages instead of the —— day of ——, 19—. Agreement that time shall be extended.

IN WITNESS, &c.

No. VI.

AGREEMENT *for a* LEASE *of a* HOUSE IN TOWN *in consideration of a* PREMIUM. *The* LESSOR, *who is a* BUILDER, *agrees to complete the house before a certain day.* (*Equitable Interest.*)(*n*)

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression where the context admits includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression where the context admits includes the persons deriving title under him), of the other part, Parties.

(*m*) As to the statutory power to vary leases: S. L. Act, 1925, s. 59; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

(*n*) As the lessee is paying part of the fine in advance a land charge should be registered against the lessor: L. C. Act, 1925, s. 10, Class C (iv). Leases at a fine.

A fine received on a grant of a lease under the statutory powers must be treated as capital: S. L. Act, 1925, s. 42 (4). If the lease is granted by a tenant for life or statutory owner a receipt for the fine should be endorsed on Capital.

WHEREBY, in consideration of the premium of £—— to be paid to him by the Tenant, as hereinafter mentioned, and of the rent and Lessee's covenants to be reserved and contained in the Lease [Underlease] hereinafter mentioned, IT IS AGREED as follows:—

Agreement to grant lease, to be in form in First Schedule.

1. THE Lessor shall grant to the Tenant a Lease of:

ALL THAT, &c. (*describe house with any necessary exceptions or reservations*), for a term of —— years from the —— day of —— next, at the yearly rent of £——, payable quarterly on the usual quarter days, such Lease to contain the covenants and conditions and be in the form contained in the First Schedule hereto, with such variations as the deaths of the parties or other circumstances may render necessary.

Agreement by Lessor to complete house.

2. THE Lessor shall complete the said messuage in accordance with the specifications contained in the Second Schedule hereto on or before the —— day of —— next.

Lessee to pay premium.

3. THE Tenant shall accept the said Lease and pay the said premium of £—— in manner following, namely:—the sum of £—— on the signing hereof, and by way of deposit, and the remaining sum of £—— on the —— day of —— next, on which day the Lease and counterpart shall be executed.

Cost of lease.(*o*)

4. THE intended Lease and counterpart shall be prepared by the Lessor's solicitors at the cost of the Tenant, who shall not require any further evidence of the Lessor's title, the same having been sufficiently investigated and an official certificate of search having been obtained.

Deposit to be forfeited on non-performance by Lessee of his part of agreement.

5. IF the Tenant shall not perform his part of the above conditions the sum of £—— paid by him shall be forfeited to the Lessor.

AS WITNESS, &c.

THE FIRST SCHEDULE.

(The form of Lease or Underlease.)

THE SECOND SCHEDULE.

Particulars of works to be completed by the Lessor.

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the lease, and signed by the S. L. Act trustees; there must be either two individuals at least or a trust corporation to give such a receipt: *ib.*, s. 94. If the lease is granted by trustees for sale: L. P. Act, 1925, s. 28, or by personal representatives: Ad. of E. Act, 1925, s. 39, they can give a receipt for the fine. A sole representative can do so: L. P. Act, 1925, s. 27 (2) as amended.

Damages for breach of covenant.

As to the application of money received as damages for a breach of covenant: S. L. Act, 1925, s. 80; as to other capital not arising under that Act: *ib.*, s. 81.

(*o*) The mere payment of a fine does not bring the case within L. P. Act, 1925, s. 48. The case in the text is not a "sale," properly so called,

No. VII.

CONDITIONS *of* LETTING *by* AUCTION *of* LAND *in* LONDON *where there are* OLD BUILDINGS *on the* LAND *and the* TENANT *agrees to* REBUILD. (*Equitable Interest.*)(*p*)

The Lease offered by auction.

1. (1) THE Lessor shall, subject to these conditions, grant to the highest bidder a Lease [Underlease] (hereinafter called the Lease) of the land described in the particulars for a term ot [nine hundred and] ninety-nine years from the —— day of ——, 19—, at a rent for the first twelve months of the said term of a peppercorn if demanded, and at a yearly rent for the residue of the said term equal to the amount of the highest accepted bidding:

(2) A reserved or minimum rent will be fixed, and the Lessor reserves the right to bid up to that amount by his agent, but subject as aforesaid the highest bidder shall be entitled to the Lease:

(3) If any dispute occurs concerning any bidding the property shall be put up again at the last undisputed bidding, or the auctioneers may decide the dispute.

Bidding.

2. No bidder shall advance a less yearly sum at any bidding than the sum fixed by the auctioneers, and no bidding shall be retracted.

Highest bidder to sign contract, and pay deposit.

3. THE person whose bidding is accepted (hereinafter called the Tenant) shall immediately thereupon sign the annexed contract, and, for identification, the form of lease hereinafter

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of an interest in land. It is not a matter of making title, for purposes of convenience, by means of a demise or sub-demise. The essence of the transaction is to create the position of landlord and tenant. See also note to next Precedent, and L. P. Act, 1925, s. 205 (1) (xxiv).

Transaction not a sale, and not within L. P. Act, 1925, s. 48.

(*p*) An auction makes the transaction look as if it were a sale. This, however, is not so; it is not a sale of any existing interest in land, but is merely a method of securing a lessee at the best rent that can be reasonably obtained. Nor is it a method of carrying out a sale of land by demise or sub-demise, to which resort is had when land comprised in a lease is to be sold in lots at apportioned rents, the purchaser of the last lot taking an assignment of the head term, subject to underleases for the whole term less one day, granted to the purchasers of the other lots. In such a case the object of the transaction is to obtain purchase-money, and is accordingly treated as a sale for the purposes of L. P. Act, 1925, s. 48. The case in the text does not come within that section, and see note to last Precedent.

Sale by sub-demise.

Sale by demise.

A sale by demise might be effected where land subject to a perpetual rent-charge is sold in lots, each completion (except the last) being carried out by a grant of a part of the land for a long term at an apportioned rent, the purchaser of the last lot taking a conveyance of all the land subject to the entire rent-charge, but with the benefit of the rents reserved by the sales by demise.

referred to, and shall at the same time pay to the auctioneers on behalf of the Lessor a sum by way of deposit equal to the amount of his bidding, which payment shall (subject to these conditions) be accepted by the Lessor in discharge of the rent for the second year of the said term.

References.

4. (1) WITHIN four days from the date of the auction the Tenant shall furnish the solicitors of the Lessor with the names and addresses of three persons to be referred to as to his capacity, financial or otherwise, to carry out his contract:

(2) If the Lessor shall, within fourteen days from the signing of the contract, decide, as the result of inquiry or otherwise, that the Tenant is ineligible as a tenant or contractor, the Lessor may by notice in writing signed by his solicitors annul this contract, in which case the Tenant shall be repaid the sum paid by him on the signing of the contract, but without interest, costs, damages or any other compensation whatsoever.

Lessor's title.

5. THE Tenant shall not require the production of or investigate or make any objection or requisition in respect of the title of the Lessor or of his power to grant the proposed Lease, but an epitome of the title will be furnished sufficient to enable the Tenant to obtain the requisite official certificate of search.

Identity.

6. THE property is believed and shall be taken to be correctly described as to dimensions, quantities, boundaries and otherwise, and will be demised subject to all rights of light and other easements affecting the same, and if any error, mis-statement or omission in the particulars or in the annexed plan as to dimensions or otherwise shall be discovered, it shall not annul the contract for letting, nor shall the rent be reduced or increased by reason thereof.

Possession.

7. (1) POSSESSION of the property shall be given on the —— day of ——:

(2) The property shall, as from the date of the contract, be at the risk of the Tenant, who shall, as from that day, pay the usual outgoings, and the same shall (if necessary) be apportioned:

(3) As from the last-mentioned day the Tenant shall become entitled for his own benefit to the materials of such of the buildings which may then be standing on the property as belong to the Lessor on payment to the Lessor of the sum hereinafter mentioned.

Erection of building, &c.

8. (1) THE Tenant shall at his own risk and cost with all reasonable speed after the —— day of —— pull down and

remove the buildings and erections now standing upon the property, and shall pay to the Lessor on demand the sum of £—— for the old materials before such removal :

(2) The Tenant shall erect and build on the land in a substantial and workmanlike manner, with the best materials of their several kinds, and in conformity in every respect with plans, elevations and specifications to be approved by the surveyor of the Lessor, and under the inspection and to the satisfaction of such surveyor, one messuage of the first-rate class of building, with all proper and suitable outbuildings, offices, conveniences, and appurtenances :

(3) The Tenant shall expend in erecting such buildings not less than the sum of £——, the said messuage to be built and covered in on or before the —— day of ——, 19—, and to be carefully finished fit for habitation, and the other buildings to be completed fit for use on or before the —— day of ——, 19— :

(4) The Tenant shall not at any time during the term hereby agreed to be granted erect or build or permit to be erected or built upon any part of the property any messuage or building not in accordance with the plans and elevations previously approved and signed by the surveyor for the time being of the Lessor, nor make any alteration in the external elevation of the said buildings without the previous consent in writing of the Lessor or of his surveyor.

Clay, &c., not to be removed.

9. (1) No sand, earth, clay, loam or gravel dug out from the premises shall be sold or disposed of, nor shall any be removed except so far as may be necessary for the execution of the works :

(2) The Tenant shall not during the progress of the works or afterwards burn bricks or cement or create or allow any unnecessary nuisance on the land :

(3) The Lessor reserves the right to all antiquities and articles and objects of interest and value found under the surface of the land with power to remove the same and take possession thereof upon making such compensation for loss of time or other damage (if any) as the Lessor's surveyor shall award.

Shoring up, &c.

10. (1) The Tenant at his own cost shall shore up and support all buildings, walls, vaults, cellars, and other structures and matters whatsoever that may be likely to be endangered or disturbed by the works, and shall take all risk of damage of every description that may accrue to any person or property :

(2) The Tenant shall before commencing the said works erect before the whole front of the premises and maintain during

the pulling down of the present buildings and erection of the proposed new buildings a good and substantial close hoarding, and shall construct and maintain a temporary footway with post and rail fencing for the protection of the public in accordance with the requirements of the local authority.

Indemnity as to personal injuries.

11. THE Tenant shall indemnify and save harmless the Lessor and the persons deriving title under him against any proceedings, damages, claims or expenses in respect of any injury (including personal injuries, whether caused by accident or otherwise) which may be done or alleged to be done by the Tenant or his agents, builders, contractors or workmen or other persons employed by him or them to any adjoining or neighbouring premises, or to the lights thereof, or to any persons in and about the erection of the new buildings or incident thereto.

Compliance with London Building Act, 1894.

12. (1) THE Tenant shall at his own expense in the execution of the works comply in all respects with the London Building Act, 1894, and all other statutory provisions and the bye-laws and regulations of all local or other authorities, and execute and do all works and things required by any such Acts, bye-laws or regulations:

(2) The Tenant shall take subject to all rights of light and air and other easements (if any) existing in respect of any portion of the land, and shall indemnify and save harmless the Lessor and the persons deriving title under him against all fees, charges, penalties, claims and expenses to be made or incurred, or which may be payable for obtaining the approval of any local or other authority to any of the works or matters aforesaid, and shall do all such work to the satisfaction of the surveyor of the Lessor.

Drainage.

13. THE Tenant shall form the drains to be used in connexion with the buildings to be erected as aforesaid and connect them with the nearest main sewer and pave the footways adjoining the said buildings and form the channels outside the same to the satisfaction in all respects of the Lessor and the local or other authorities or their respective surveyors, and for that purpose afford them every facility for the inspection of the works while in progress.

Insurance.

14. THE Tenant shall during the erection, &c. (*continue as in clause* 24 *of Prec.* IV *of this section, p.* 1077, *supra*).

Power for Lessor to enter and view.

15. (1) THE Lessor or his surveyor may at all reasonable times enter upon the premises and view the state and progress of the buildings and works and the materials used and intended for use therein:

(2) Any portion of any building which is not built in accordance with the approved plans and specifications shall be amended or rebuilt on notice in writing being given by the Lessor or his surveyor.

Grant of lease on completion of work.

16. As soon as the said buildings shall have been covered in, drained and completely finished ready for use or occupation in accordance with the provisions hereinbefore contained, and a certificate to that effect signed by the Lessor's surveyor shall have been produced to the Lessor, the Lessor shall grant to the Tenant or his nominee (provided such nominee is approved by the Lessor) a lease of such buildings and the said land for the term and at the rents hereinbefore mentioned or referred to.

Form of lease.

17. THE Lease to be granted in accordance with these conditions shall be in the form of and contain the reservations, covenants and provisions contained in the form of lease, a print of which will be produced in the auction room at the time of the auction, and may be inspected at any time during business hours within fourteen days next preceding the day of the auction at the office, No. —, —— Street, of Messrs. ——, the solicitors of the Lessor.

Counterpart to be executed, &c.

18. (1) THE Tenant shall accept a lease of the property and the buildings to be erected thereon if and when the Lessor's surveyor shall have certified the completion of the said buildings in accordance with these conditions, and shall on accepting the Lease execute a counterpart thereof :

(2) Upon the grant of the said Lease the Tenant shall apply for registration with a good leasehold title under the Land Registration Act, 1925, and in default the Lessor may in the name and at the cost of the Tenant make the requisite application, and take all necessary steps to obtain registration of the title.

Preparation of lease, &c., and costs.

19. (1) THE Lease and counterpart shall be prepared by the solicitors of the Lessor, and the Tenant shall pay the cost thereof according to scale, and also the cost of registering the title under the Land Registration Act, 1925, in addition to the stamp duties and other disbursements:

(2) The Tenant shall also pay the fees of the surveyors for approving the plans and specifications and for service in the interest of the Lessor and for certifying the completion of the buildings, such fees being agreed at £1 per cent. on the amount expended on the buildings :

(3) The Tenant shall also before the grant of the Lease pay

the fees of the district surveyor and any other fees imposed by the proper authority in connexion with the said buildings and works.

Position as between the parties until lease granted.

20. (1) UNTIL such Lease shall be granted, the Tenant shall as from the —— day of —— (*the commencement of the term*) pay to the Lessor the rent to be reserved by the Lease, and shall also as from the —— day of —— (*the day on which possession is to be given*) pay the sewer and main drainage rates, local and all other taxes, rates, charges, duties, impositions, assessments and outgoings whatsoever, whether parliamentary, parochial, municipal or otherwise, which now are or at any time after the last-mentioned day shall be taxed, charged or imposed on the land, buildings and premises, or the owners or occupiers in respect thereof, and shall perform all the covenants and agreements on his part agreed to be contained in the Lease so far as the same shall be applicable, and as if the Lease had been actually granted :

(2) The Lessor shall have and be entitled to all such remedies by distress, action or otherwise for recovering rent in arrear and for breach of any of the covenants or agreements on the part of the Tenant as if the Lease had been actually granted :

(3) If the building operations shall be wholly suspended for the period of one month, or if the Tenant shall make default in erecting, covering in, draining and completing the said buildings within the time and in manner aforesaid, or if the Tenant shall neglect or refuse to accept a Lease of the property and to execute a counterpart thereof, or to pay the costs, fees and expenses of the Lessor and his surveyor and of the district surveyor in respect of such Lease and the buildings therein comprised in accordance with these conditions within one month after being requested so to do by or on behalf of the Lessor (in all of which respects time shall be of the essence of the contract), or shall commit any other breach of these conditions, and shall not remedy the same immediately upon receiving notice in writing so to do, then and in any such case ;

(i) The sum paid by the Tenant by way of deposit as aforesaid shall be absolutely forfeited to the Lessor ;

(ii) The Lessor may resume and take possession of the land described in the particulars, and all buildings, erections, materials, and plant thereon, without making any compensation or allowance to the Tenant in respect thereof ;

(iii) The annexed contract shall as to the premises so resumed or taken thereupon absolutely cease, and the Lessor shall be at liberty to deal with the same as if the said contract had never been made;

(iv) The said right of re-entry shall be a cumulative remedy, and shall not prejudice the right of the Lessor to recover any arrears of rent or other money due to him from the Tenant in respect of any breach by him of these conditions.

Tenant not to assign, &c., until lease granted.

21. THE Tenant shall not before the actual grant of the Lease assign, sub-let, or part with the property hereby agreed to be demised or any part thereof, or the benefit of the annexed contract or these conditions, or any part thereof, without the previous consent in writing of the Lessor.

Agreement not to operate as a demise.(q)

22. THIS agreement shall not operate as an actual or present demise, or create any leasehold interest in or tenancy of the premises or any part thereof, and shall not give the Tenant any legal interest in any part of the premises until the Lease shall be actually granted, but shall confer on the Tenant only a right to enter upon the premises for the purposes of carrying out these conditions:

Provided that any rents or yearly sums to be paid by the Tenant to the Lessor under these conditions which shall be in arrear shall be recoverable by the Lessor as rent in arrear and as if the Lease had been actually granted.

General Conditions of 1925.

23. IN regard to any matter not expressly provided for by these conditions, the General Conditions of 1925 shall apply.

MEMORANDUM.

IT IS HEREBY AGREED between Messrs. ——, as agents for —— (*Lessor*), of, &c., and —— (*Tenant*), of, &c., that at the letting by auction this day of the property described in the annexed particulars the said —— (*Tenant*) was the highest bidder for and was declared to be entitled to a Lease of the said property at the yearly rent of £——, subject to the foregoing conditions, and that he has paid to the said Messrs. ——, as agents for the Lessor, the sum of £——, and that the said particulars and conditions shall be taken as the contract for the letting of the said property at the above-mentioned rent.

AS WITNESS our hands this —— day of ——, 19—.(r)

(q) See *Driscoll* v. *Battersea Boro' Council* [1903], 1 K. B. 881; 72 L. J. K. B. 564.

Estate contract.

(r) The tenant can protect his rights by registering a land charge under L. C. Act, 1925, s. 10, Class C (iv).

No. VIII.

CONDITIONS *on the* Letting *by* Auction *of* Building Land *in* Lots. (*Equitable Interests.*)(s)

Lease to be granted to highest bidder.

1. (1) The Lessor will, subject to these conditions, grant to the highest bidder in respect of each Lot a Lease of the Lot bid for by him (*continue as in condition* 1 *of last Precedent, p.* 1081).

Advance on bidding.

2. No bidder, &c. (*as in condition* 2 *of last Precedent, p.* 1081).

Highest bidder for each lot to sign contract, &c.

3. Each person whose bidding is accepted (hereinafter called a Tenant) shall, &c. (*as in condition* 3 *of last Precedent, p.* 1081).

References, title, description, possession, &c.

4 to 7. (*As in conditions* 4 *to* 7 *of last Precedent, p.* 1082, *but saying* "each Tenant" *and omitting the last paragraph of condition* 7.)

Fences.

8. Each Tenant shall, within one month of his taking possession, erect and maintain round his Lot a post and rail or other fence to the satisfaction of the Lessor's surveyor.

Tenants to submit plans, &c.

9. (1) Each Tenant shall, on or before the —— day of ——, 19—, submit to the Lessor's surveyor for his approval all necessary plans, elevations, and sections of the buildings proposed to be erected by him, and full specifications of the construction of the said buildings and the materials to be used therein, and shall make such alterations in the said plans, elevations, sections and specifications as the said surveyor may require :

(2) The said drawings shall be signed by each Tenant and the said surveyor and deposited with the said surveyor and shall thenceforth be binding on both parties :

(3) Each Tenant shall pay to the said surveyor a fee of three guineas for each house on his signing the plans as approved.

Purchaser to erect buildings.

10. (1) Each Tenant shall erect the buildings in a good and substantial manner and in accordance with the drawings and specifications approved as aforesaid, and shall erect and roof in the same before the —— day of ——, 19—, and shall completely finish the same fit for occupation and use on or before the —— day of ——, 19—, to the approval of the surveyor of the Lessor in all respects :

(2) No sand, earth, clay, loam or gravel shall be dug out except so far as may be necessary for the performance of the works to be executed under these conditions.

Power for Lessor's surveyor to enter.

11. (1) The said surveyor or his agents may enter upon the said buildings at any time until completion :

(2) Any portion of any building which is not built in accordance

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(s) See notes to last Precedent.

with the approved plan and specification shall be amended or rebuilt on notice in writing being given by the said surveyor.

Purchaser to insure buildings while in progress.

12. (1) EACH Tenant shall, during the erection of the buildings, insure and keep insured the same to the full value thereof in the joint names of himself and the Lessor in an insurance office to be approved by the Lessor, and shall produce the policies for such insurance and the receipts for the premiums thereon when required :

(2) All money received by virtue of such insurance shall be laid out in rebuilding or reinstating the buildings.

Lease to be granted on certificate of surveyor.

13. UPON a certificate signed by the said surveyor that the carcase of a building has been completed and roofed in within the time hereinbefore prescribed and to his satisfaction, and upon payment by a Tenant of the sum of £—— for the costs of his Lease and counterpart in addition to the stamp duties, and the sum of £—— for the surveyor's fee for drawing plans for such Lease and counterpart, the Lessor shall grant, and a Tenant shall accept, a Lease of the property and the buildings thereon for such term and at such rent as is hereinbefore mentioned.

Lease to be prepared by Lessor's solicitors, and as to form of lease.

14. EACH Lease shall be prepared by the Lessor's solicitors, and shall be in the form of a draft, which will be produced in the auction room at the time of the auction, and may be inspected at their offices during office hours for seven days next preceding the auction date.

Power for Lessor to rescind.

15. (1) IF any Tenant shall not complete the carcase of his building, or shall not completely finish the buildings fit for habitation and use, by the times respectively limited for those purposes by these conditions, or shall refuse or neglect to take up and pay for his Lease or to execute and deliver the counterpart thereof (and in these respects, where any time is by these conditions fixed for the performance or observance of any conditions or act, time shall be of the essence of the contract), his deposit shall be absolutely forfeited to the Lessor, who shall have full power to resume possession of the property and to appropriate and become absolute owner of all buildings then standing thereon and of all materials and things then remaining thereon, and to re-let the premises and otherwise deal with the same as fully in all respects as if the contract with the defaulting Tenant had never been made :

(2) All expenses attending such re-letting shall be paid on demand by the defaulter to the Lessor, and in case of non-payment shall be recoverable as liquidated damages :

(3) This condition shall operate without prejudice to the right of the Lessor to recover any arrears of rent or other sums then due from the defaulting Tenant and without prejudice to any rights or remedies which the Lessor might otherwise have for breach of these conditions or any of them.

Option to purchase the reversion.

16. (1) EACH Tenant shall have the right of purchasing the fee simple at —— years' purchase of the ground rent if the said right shall be claimed within twelve months from the —— day of ——, 19—:

(2) If any Tenant claims such right he shall sign an agreement for purchase already prepared by the Lessor's solicitors, a copy of which will be produced in the auction room at the time of the auction, and such purchase shall be completed within three months from the date of such claim.(t)

General Conditions of 1925.

17. IN regard to any matter not expressly provided for by these conditions, the General Conditions of 1925 shall apply.

MEMORANDUM.

AT the letting by auction this day of the property comprised in the above particulars, A. B., of ——, was the highest bidder for and was declared to be entitled to a Lease of Lot — at the rent of £——, and the said A. B. has paid to Messrs. ——, as agents for —— the Lessor, the sum of £—— by way of deposit, as the said agents hereby acknowledge: AND the said A. B., and the said agents on behalf of the Lessor, hereby agree to observe and perform the above conditions.

AS WITNESS our hands this —— day of ——, 19—.

SECTION IV.

AGRICULTURAL LEASES.

NO. I.

AGREEMENT *for a* LEASE (*full form*) *of a* FARM (*partly* ARABLE *and partly* GRAZING) *from* YEAR TO YEAR, *made with reference to the Agricultural Holdings Act*, 1923, *adapted to a Lady Day or Michaelmas Tenancy.*(u) (*Legal Estate.*)

Parties.

AN AGREEMENT, made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Landlord, which expression, where the

Custom of district.

(t) An option to purchase can be protected by the purchaser by registering a land charge: L. C. Act, 1925, s. 10, Class C (iv). As to granting options: S. L. Act, 1925, s. 51; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

(u) The necessary alterations must be made in this Precedent to conform context admits, includes the persons deriving title under him) [by X. Y., of, &c., his duly authorised agent (*v*)], of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part,

WHEREBY IT IS AGREED as follows:—

Agreement to let and take. Parcels.

1. THE Landlord shall let, and the Tenant shall take, the farm, farmhouse, outbuildings and land, containing — acres, — roods, and — perches or thereabouts, situated in the Parish of ——, in the County of ——, commonly known as —— Farm (hereinafter called the Farm), and more particularly described in the Schedule hereto and delineated on the plan hereto annexed, and thereon edged pink (except and reserved as hereinafter mentioned), for a term commencing on the —— day of ——, 19—, and continuing from year to year until determined at the end of the second or any subsequent year in the manner hereinafter appearing, at the following rents (namely):— Term

Rents. General.

(1) The certain clear yearly rent of £——, to be paid by equal half-yearly [quarterly] payments on the —— day of ——, [and] the —— day of ——, [the —— day of ——, and the —— day of ——] in every year, the first payment to be made on the —— day of —— next, and the whole of the last year's rent (or so much thereof as shall not be previously due) shall become due and payable on the day upon which notice to terminate the tenancy is served:

(2) The additional yearly rents hereinafter mentioned, such Additional.

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with the custom of the district, so far as the Agr. H. Act, 1923, s. 30, will allow. In view of this section, it is desirable that the tenancy should be for more than one year. Where the land let is arable, the section does not apply to grassland, or to market gardens: *Taylor* v. *Steel-Maitland* [1913], S. C. 562; hence, freedom of cropping may be restricted in these cases in a lease for a longer term than one year. Many of the clauses in this Precedent may be omitted according to the circumstances of each case. See also forms of leases, p. 1014, *et seq.*, for variations, where the lessor is not the owner of the fee simple. In the case of registered land the proprietor will be the landlord, and the heading will be added in accordance with the above forms. The general rule is that the estate owner must grant every lease or tenancy, and see last chapter. Variations. Registered land.

(*v*) A person in a fiduciary position has no right to delegate his discretionary powers, apart from an express provision in the trust instrument or a statutory power to delegate, though, if the matter is purely ministerial, the agent can sign his name. Powers to employ agents are given by T. Act, 1925, s. 23, but, save in relation to property outside the United Kingdom, these do not, *semble*, extend to the execution of deeds or tenancy agreements. As to execution of instruments by individuals: L. P. Act, 1925, s. 73, or by or on behalf of corporations, *ib.*, s. 74. Delegation. Execution of instruments.

additional yearly rents to commence from the happening of the event on which the same are to arise, and to be payable half-yearly [quarterly] on the days aforesaid during this tenancy, except as hereinafter mentioned.(*w*)

Termination of tenancy.

2. THE tenancy shall be determined by the Landlord or Tenant giving to the other notice in writing on or before the —— day of —— in any year to determine the tenancy upon the first day after service of the notice upon which such lease can be validly determined in accordance with the provisions of the Agricultural Holdings Act, 1923 [*or* giving to the other not less than twelve months' notice in writing from the end of the then current year of tenancy].(*x*)

Reservations to Landlord.

3. THE following items are hereby reserved out of this tenancy to the Landlord—

Timber.

(i) All timber, timberlike trees, tellers, saplings, underwood, fruit trees, shrubs and bushes, with power for the landlord and his workmen and others to mark, fell, cut and remove the same or to plant any such trees, shrubs or bushes, doing as little damage as possible, and paying to the Tenant reasonable compensation for all damage actually done;

Mines, &c.

(ii) All mines and minerals, quarries, beds of chalk, clay, stone, gravel, sand, marl. [salt, brine,] and other substrata, with power for the Landlord and all persons authorised by him to enter upon the Farm, search for, work and remove the same, and to make and burn bricks and tiles, and to execute

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Additional rents.

(*w*) Notwithstanding any contrary stipulation, additional rents or other liquidated damages are prohibited by the Agr. H. Act, 1923, s. 29, except in respect of any provision in the contract relating to the breaking up of permanent pasture, the grubbing of underwood, the felling, cutting, lopping or injuring of trees, or the burning of heather.

Notice to quit.

(*x*) By the Agr. H. Act, 1923, s. 25, notwithstanding any contrary stipulation, a notice to quit purporting to determine a lease before the expiration of twelve months from the end of the then current year of tenancy, is void. But there are certain exceptions to this rule: *ib.* This section does not apply where the tenancy may be determined, by re-entry, without previous notice, but does apply to a notice given pursuant to an option for either party to determine the tenancy at an intermediate period: *Edell* v. *Dulieu* [1924], A. C. 38; 93 L. J. K. B. 286. Tenancies determinable by death require the same notice as other tenancies: s. 24, as regards tenancies of two years and more, see s. 23.

By s. 26 power to give notices to quit to yearly tenants upon the sale of the holding is restricted: Spencer's Agr. H. Acts, 7th ed., 83. As to serving notices: s. 53; *Van Grutten* v. *Trevenen* [1902], 2 K. B. 82; 71 L. J. K. B. 544.

The rights of mortgagees to determine a lease of an agricultural holding not binding on them are regulated by the Agr. H. Act, 1923, s. 15: see Spencer's Agr. H. Acts, 7th ed., 60.

all works incidental thereto (with power to sink shafts and let down the surface and any buildings erected or to be erected thereon in the exercise of the aforesaid liberties) making to the Tenant reasonable compensation for damage thereby done to the surface, buildings or crops, and allowing an abatement of rent in respect of the surface land of which the Tenant may be deprived;

Springs.

(iii) All springs, wells, ponds, streams and watercourses, with all fish therein, with power for the Landlord and any persons authorised by him to take and carry away water therefrom by means of pipes or otherwise (provided that sufficient water be left for the Tenant for domestic and agricultural purposes) and to fish in the said waters;

Rights of way.

(iv) Right for the Landlord and all other persons authorised by him to cross and recross any parts of the Farm with or without horses, carriages, motors or other vehicles, or animals, the Landlord paying to the Tenant reasonable compensation for damage done to the crops or surface thereby;

Game, &c.

(v) All game, including nests and eggs of the same, and (subject to the provisions of the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906) all hares, rabbits, foxes, wild-fowl and fish [woodcock, snipe and landrail (*y*)], with the exclusive right, subject as aforesaid, for the Landlord

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"Game."

(*y*) Woodcock, snipe, quail and landrail are not "game" within the Game Act, 1831, s. 2, but are within the Game Licences Act, 1860, s. 4. See also definition of "game" in Agr. H. Act, 1923, s. 11 (5); note to clause 4 of this Precedent.

Damage by game.

By the Agr. H. Act, 1923, s. 11, a tenant may claim compensation for damage done to his crops by game, the right to kill which is vested in another person, provided that damage exceeding one shilling per acre was done by game as defined in this section, that no avoidable delay occurred before the landlord was given notice of the damage, and that reasonable opportunity was afforded the landlord of inspecting the damage, in the case of a growing crop before it was reaped, raised or consumed, and in the case of a reaped or raised crop, before it was removed from the land. Notice in writing of the claim with particulars must also be given within one month after the expiration of the calendar year, or such other period of twelve months as may be substituted by agreement. The amount of compensation under this section will be fixed by agreement or arbitration. Where the landlord can prove that under a contract of tenancy made before 1909 any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such contract allowance was made for such damage to an agreed amount, such amount will be deducted from the award made by the arbitrator. Where the right to kill game is vested in another person, *e.g.*, a shooting tenant, the landlord is entitled to be indemnified by that person for any compensation payable under this section. Under this section a landlord is liable for damage done by the game of a neighbouring owner: *Thomson* v. *Galloway* (1919), 56 Sc. L. R. 448; a case on the Scottish Act. A form of notice is given, *infra*.

Shooting tenant; liability of.

and all persons authorised by him to preserve the same, and to shoot, fish, hunt, course and sport on the Farm;

Rights of way of other tenants.

(vi) All rights of way (if any) hitherto used or enjoyed across any part of the Farm by the Landlord or his tenants in respect of other property of the Landlord;

Resumption of possession.

(vii) Power to take any portion of the Farm (except the house, buildings, and garden) for building or any other purpose not provided for by section twenty-seven of the Agricultural Holdings Act, 1923, on giving to the Tenant at least fourteen days' notice in writing, and allowing to the Tenant fair and reasonable compensation. either by the substitution of other land or by allowing a proportionate reduction in rent, and also making compensation for every crop or preparation for a crop on the land of which the Landlord resumes possession: Provided that such notice shall not terminate or entitle the Tenant to terminate the tenancy hereby created except in regard to the land so taken;(z)

Power to inspect.

(viii) Right for the Landlord and his agent and all persons authorised by the Landlord, with or without workmen, horses and vehicles, to enter on any part of the Farm (a) for all reasonable purposes, including the planting of trees, erecting sufficient guards and protection for the same;

(ix) Right for the Landlord to make any improvement on the Farm;

[Entry on arable land, &c., before termination of tenancy.(b)]

[(x) The Landlord or his incoming tenants shall at any time after the 1st day of January preceding the expiration of a notice to quit the Farm (given or received) have full power to enter upon and plough and cultivate all the arable lands, except those on which the outgoing Tenant may have an away-going crop, and for that purpose to have the use of stables on or belonging to the Farm for not more than —— horses, and to

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Partial notice to quit.

(z) Apart from contract, the Agr. H. Act. 1923, s. 27, enables the tenant to treat the notice as a notice to quit the entire holding. Compensation is payable as if the part of the holding resumed was a separate holding: s. 27. As to compensation, where the tenant elects to treat such notice as notice to quit the whole holding: s. 12 (7) (d). As to notices to quit part: L. P. Act, 1925, s. 140 (2), as amended by L. P. (Amend.) Act, 1926, s. 2; and see note thereon in last chapter.

Notices on sale.

Where notice is given in respect of a contract for sale made before the notice has expired such notice is void unless the tenant has, prior to the contract of sale, in writing agreed that it shall be valid.

Power to view.

(a) Power to view is reserved to the landlord or any person authorised by him: Agr. H. Act, 1923, s. 28.

(b) This clause is suitable to a Lady Day tenancy in the North Riding of Yorkshire.

sow with seeds any parts of the fallow or turnip lands from which an away-going crop is to be taken, either at the time of sowing such lands with corn or at any time thereafter, as the Landlord or his incoming tenants shall think proper, and to drill or harrow in the seeds with a light-tined or bush harrow and roll the same without making any allowance on account thereof, except for any wilful injury which may be done to the property of the outgoing Tenant.]

Notice of game damage.

4. (1) For the purposes of this agreement the period of twelve months, ending on the —— day of ——, shall be substituted for the calendar year, as the period within one month after the expiration of which written notice of claims in respect of damage by game under section eleven of the Agricultural Holdings Act, 1923, must be given :(*c*)

Disputes as respects compensation to be submitted to arbitration.

(2) All disputes relating to compensation under this agreement, as regards damage done to the holding by the Landlord, his servants or agents, in the exercise of any of the powers reserved to him, shall be submitted to arbitration in the manner directed by the Agricultural Holdings Act, 1923, for awarding compensation under that Act, and the decision of the arbitrator shall be final.

Agreements by the Tenant :—

5. The Tenant for himself and his assigns hereby agrees with the Landlord as follows :—

To pay rent.

(1) To pay the before-mentioned certain and additional rents at the times and in manner aforesaid :

Rates and taxes.

(2) To pay all rates, taxes, assessments, impositions and other outgoings for the time being charged or imposed upon the Farm or upon the owner or occupier in respect thereof [land-tax], landlord's property tax and tithe rentcharge (if any) only excepted :

Compensation to outgoing tenant.

(3) To pay to the Landlord on entry or on demand a sum equal to the amount that the Landlord shall have paid or shall be or become liable to pay as compensation to the outgoing Tenant or last occupier of the Farm, either under his tenancy agreement or by virtue of the Agricultural Holdings Act, 1923, or by custom, or otherwise, together with all costs in respect of any valuation or arbitration in connexion therewith :

Compensation for damage by "game."

(*c*) See Agr. H. Act, 1923, s. 11 (2). No agreement entered into after 1908, providing that a sum shall be allowed off the rent in respect of this damage, will be effective to prevent a claim under this Act. The tenant cannot contract himself out of his right to compensation.

By s. 11 (5) "game" is defined for the purposes of that section to be "deer, pheasants, partridges, grouse and black game."

Additional rents.(*d*)

(4) To pay the following additional rents and liquidated damages (namely)—

Breaking up pasture.

(A) £—— per annum for every acre, and so in proportion for any less quantity than an acre of land described as pasture or meadow in the Schedule hereto that shall be broken up (*e*) or converted into tillage by the Tenant without the previous written consent of the Landlord or his agent ;

Cutting down trees, &c.

(B) £—— (by way of liquidated damages) for every tree or sapling on the Farm which the Tenant shall cut down or injure without such consent as aforesaid, such last-mentioned sum to be payable on such half-yearly [quarter] day as aforesaid as shall first happen after the happening of the event on which the same is made payable, but not so as to continue as a periodical payment :(*f*)

Repairs of buildings, &c.

(5) To keep and leave the messuages, cottages, buildings, fixtures, trees, gates and premises in good tenantable repair (damage by tempest or by fire not caused by the misconduct of the Tenant, his servants or agents, excepted), and once in every fourth year of the tenancy to paint with at least two coats of oil paint of the best quality all the outside woodwork and ironwork usually painted, including gates and fences previously painted, and tar all such parts as have been formerly tarred :(*g*)

Roads, fences, drains, &c.

(6) To keep all roads, fences, bridges, drains, ponds, drinking places and watercourses on the Farm in a good and proper state of repair, and to cut, cleanse, scour and keep at a sufficient width and depth all ditches, drains and watercourses, and to keep in repair and cleanse the mouth of all outfalls and under-drains, including all eaves, gutters and stack pipes of all buildings :(*g*)

Thatching and carriage of timber.

(7) To provide and carry without charge wheat straw for

Limitation of landlord's right to damages.

(*d*) With regard to additional rents or other liquidated damages, under s. 30 of the Agr. H. Act, 1923 (notwithstanding any contract), the landlord is not entitled to recover any sum in excess of the damage actually suffered, but the section does not apply to any condition against breaking up of permanent pasture, grubbing of underwoods, or felling, cutting, lopping or injuring of trees or burning of heather. Hence in cases, other than those mentioned, the reservation of penal rents will be useless.

(*e*) See *Rush* v. *Lucas* [1910], 1 Ch. 437 ; 79 L. J. Ch. 172 ; *cf. Clarke-Jervoise* v. *Scutt* [1920], 1 Ch. 382 ; 89 L. J. Ch. 218.

Grass lands not within s. 30.

(*f*) The provisions of s. 30 of the Agr. H. Act, 1923, do not apply to grass lands which are to be retained in the same condition throughout the tenancy : sub-s. 4. The exception would, it is conceived, cease to apply where grass land has been broken up with consent.

Repairs to buildings, &c.

(*g*) The repair of the buildings and upkeep of fences, &c., are included in the definition of the "rules of good husbandry" : Agr. H. Act, 1923, s. 57.

thatching any buildings requiring the same, and to carry without charge all timber and materials provided by the Landlord for new buildings, draining or repairs :

Alteration of buildings.

(8) Not to alter any existing nor erect any new buildings on the Farm without the previous consent in writing of the Landlord or his agent :

Expense of repairs.

(9) If the Tenant shall neglect to do any repairs for which he is hereby made liable after one month's notice in writing, the Landlord shall have power to cause the same to be done and to recover the expenses thereof from the Tenant :

Hedges.

(10) To keep all hedges properly slashed, laid and trimmed in a workmanlike manner according to the best practice known in the district, and to use no wire or dead thorns for repairing any quick hedges [and to use no barbed wire whatever on the Farm between the 15th of October and the 15th of March in any year] : And not to alter, change or destroy any boundary hedge or fence on any part of the Farm whereby the size or shape of any field shall be rendered different from its present size or shape without the consent in writing of the Landlord or his agent :

To consume, produce, and as to cultivation during last year.(*h*)

(11) Not to sell off or remove from the Farm any hay, straw, roots or green crops during the last year (*i*) of the tenancy, nor at any other time without returning to the holding within six months from the sale or removal of such produce, in accordance with the provisions of section thirty of the Agricultural Holdings Act, 1923, the full equivalent manurial value of all crops sold off or removed from the Farm in contravention of custom or of the terms of this agreement :(*j*)

Notice of sales of crops, &c.

(12) To give written notice to the Landlord or his agent of all crops sold or removed contrary to this agreement within one week of the crop being sold or removed, together with a written statement showing what provision has been or is to be made by the Tenant to protect the Farm from injury or deterioration by such sale or removal, and during the last year of the tenancy to comply with the reasonable requirements of the Landlord or

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A tenant who makes default will not be entitled to any compensation for disturbance upon quitting the holding : s. 12.

(*h*) This covenant runs with the reversion : *Chapman* v. *Smith* [1907], 2 Ch. 97 ; 76 L. J. Ch. 394.

Power to contract as regards the last year.

(*i*) The Agr. H. Act, 1923, s. 30 (1), does not apply in a yearly tenancy as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding or in any other tenancy as respects the last year. Hence the landlord can impose terms as regards the last year.

(*j*) See *Meggeson* v. *Groves* [1917], 1 Ch. 158 ; 86 L. J. Ch. 145.

his agent in regard to cropping, cleaning, fallowing and otherwise cultivating the Farm :(*k*)

Accounts of sales and purchases.

(13) To keep and produce on demand to the Landlord or his agent true accounts and vouchers of all produce sold or removed from the Farm and of all artificial and other manures and feeding stuffs purchased and applied to the Farm pursuant to section thirty of the Agricultual Holdings Act, 1923, and of all home-grown produce consumed on the Farm :

Insurance.

(14) To insure all live and dead stock, hay and straw for the time being on the Farm to the full value thereof, and in the event of fire to return, spend and consume forthwith upon the Farm the full amount received in compensation from the Insurance Company or other insurers (representing the value of all produce burnt) or return the manurial value of produce burnt in tillages ; And not to do or suffer any act by which the Landlord's policies of insurance may be invalidated or the rate of premiums paid thereon increased :(*l*)

Cultivation.

(15) To keep a good and sufficient head of live stock and to farm, cultivate and manage the arable land in a good, fair, and husbandlike manner, and so as not to injure or deteriorate the Farm, and to leave the same clean and in good heart and condition :(*m*)

Permanent pasture.

(16) Not to break up any land described as meadow, grass or pasture in the Schedule hereto without the previous written consent of the Landlord or his agent ; And not to mow the grass lands more than once in any year nor two successive years without applying thereto not less than ten tons per acre of good rotten dung or other manure equivalent thereto :(*n*)

Improvements under Part III ; limitation of Tenant's right to compensation.

(*k*) Under s. 30 (3) the tenant is not entitled to any compensation in respect of improvements comprised in Pt. III of the First Schedule to the Act which have been made for the purpose of making such provision for protecting the holding from injury or deterioration as is required by s. 30.

(*l*) As to the construction of covenants to insure and the liability of the covenantor to make good any deficiency out of his own money where the contract so requires : *Enlayde* v. *Roberts* [1917], 1 Ch. 109 ; 86 L. J. Ch. 149. Where a tenant is required to insure with a specified company he is only bound to effect such a policy as is usually issued by that company : *Upjohn* v. *Hitchins* [1918], 2 K. B. 48 ; 87 L. J. K. B. 1205.

Cultivation.

(*m*) This condition operates only during the last year of the tenant's occupancy or at any time after notice to quit has been served. As to the measure of damages for breach of this condition : *Williams* v. *Lewis* [1915], 3 K. B. 493 ; 85 L. J. K. B. 40 ; *Wedd* v. *Porter* [1916], 2 K. B. 91 ; 85 L. J. K. B. 1298. It may negative s. 9, as to compensation payable to the tenant for an improved system of farming other than that directed by the contract of tenancy.

(*n*) Such a provision is valid : s. 30 (4).

To weed the Farm and keep pasture land and growing crops clean.

(17) To spud up, cut and destroy all thistles, nettles and other weeds throughout the Farm, and to keep down moles and spread all mole hills and ant hills, and to keep the grass lands clean and in good heart and condition and the growing crops of corn and pulse, and the root crops clear of weeds and rubbish, and to comply forthwith with all requisitions made from time to time by the County Agricultural Committee or other authority :

Preservation of timber, &c.

(18) To preserve all timber and other trees, pollards and saplings, underwood and live fences from injury by horses, cattle or otherwise : And not to cut, lop, top, or crop any of the timber, timberlike trees or saplings likely to become timber, now or hereafter growing upon the Farm, nor hang gates on nor drive any nail or hook into or otherwise injure any such tree or sapling :

Waste.

(19) Not to commit or permit waste, or spoil on any part of the Farm :

Trespass.

(20) To give notice to trespassers not to trespass on the Farm :

Encroachment.

(21) So far as possible to stop all encroachments and to immediately inform the Landlord thereof and to use his best endeavours to prevent the acquisition of any rights of way, public or private, or easements over any part of the Farm, and to allow his name to be used in any proceedings against such trespassers or other offenders as aforesaid on being indemnified by the Landlord for any expenses caused thereby :

Preservation of game.

(22) Subject to the rights of the Tenant under the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906, to preserve for the use of the Landlord(*o*) all fish, game, eggs and nests of game, wild-fowl, snipe, woodcock and landrail, and for that purpose to destroy rats in all buildings, stacks or elsewhere on the Farm, and to assist the persons employed for that purpose by the Landlord in killing all vermin, and to warn and keep off all unauthorised persons from shooting, fishing, sporting or molesting the game, or trespassing on any part of the Farm for that purpose, and to give notice to the Landlord or his agent of anyone so offending or trespassing, and at the request of the Landlord to allow the Tenant's name to be used in any proceedings to be taken against the offenders, the Landlord paying all the expenses of any such proceedings :

Not to keep a dog injurious to game.

(23) Not to keep any dog that is injurious to the game or interferes with the preservation of the game, but the Tenant shall destroy or part with any such dog on receiving not less than one

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(*o*) As to compensation in respect of damage by game : Spencer's Agr. H. Acts, 7th ed., 8, 36.

week's notice from the Landlord or his agent to do so, and if the Tenant neglects to do so for one week or more the Landlord may have the dog destroyed :

(24) Not to allow any dog to run loose at night :

Underletting, &c.

(25) To reside in the farmhouse, and not to assign, underlet or part with the possession of the whole or any part of the premises, except cottages to labourers employed on the Farm, without the previous consent in writing of the Landlord or his agent :(*p*)

Market gardening.

(26) Not to use any part of the Farm as a market garden or for any purpose other than that provided for in this agreement without the previous consent in writing of the Landlord or his agent :

Manure, &c.(*q*)

(27) To spread annually on the arable and permanent grass land, in accordance with the most approved methods of husbandry, all manure made upon the Farm, and at the termination of the tenancy to leave upon the premises all the unconsumed stock of dung, compost or manure, which shall have been made from the last crop preceding the determination of this agreement,(*r*) as well as all the unconsumed hay and straw from such last crop on being paid (subject as to straw as hereinafter mentioned) by the Landlord or his incoming tenant the fair value thereof according to the consuming or using price at the time of the Tenant's quitting the Farm :

To yield up in good condition.

(28) On the determination of the tenancy to deliver up the Farm to the Landlord in such good tenantable repair and in such good order, state and condition as the same ought to be in having regard to the provisions herein contained :(*r*)

In last year of tenancy to sow arable with wheat, and grass seeds with Lent corn.

(29) (*If the taking is a Lady Day one*)—

(A) The Tenant shall in the last year of the tenancy, or after he has given or received notice to quit, prepare and sow in proper season with wheat such portion of the arable land as

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(*p*) The letting of grass keep, for a definite period, is a breach of this covenant, but agistment probably is not : *Richards* v. *Davies* [1921], 1 Ch. 90 ; 89 L. J. Ch. 601.

Removal of manure, &c.

(*q*) This covenant runs with the reversion : *Chapman* v. *Smith* [1907], 2 Ch. 97 ; 76 L. J. Ch. 394. This covenant is usually inserted to avoid any mistake as to the rights of the tenant ; in view of the Agr. H. Act, 1923, s. 31, it would appear to be no longer absolutely necessary. Independently of any covenant, after notice to quit has been served, a tenant may not remove or sell any manure or compost, or any hay, straw, or roots grown in the last year of the tenancy without giving the landlord an opportunity of purchasing the same : Agr. H. Act, 1923, s. 31.

(*r*) See Agr. H. Act, 1923, s. 10 ; Spencer's Agr. H. Acts, 7th ed., 35.

shall be in due course for the same, and shall sow good grass seed with the last year's Lent crops, and harrow the same:

(B) He shall also permit the Landlord or incoming tenant to enter upon the arable land (except such parts thereof as shall be in due course for wheat or in clover or root crops), at any time after the First day of January preceding the end of the tenancy, for the purpose of preparing the same for the next year's crops:

Incoming tenant may in last year enter on parts of arable to prepare for crops.

(C) He shall also at the end of the tenancy leave for the Landlord or incoming tenant all the hay, straw, and roots remaining unconsumed, the Tenant being paid or allowed for the matters and things aforesaid as hereinafter is provided:

Hay, &c., to be left for incoming tenant.

[(*If the taking is a Michaelmas one*)—

(A) The Tenant shall stack in the barns and rickyards in the last year of the tenancy, or after he has given or received notice to quit, all the corn, grain and hay produced on the Farm (the corn and grain to be there threshed out, unless previously threshed in the field, and all the hay, straw, chaff, stubble and fodder to be there consumed by cattle in a husbandlike manner, and the dung, manure, compost or soil therein arising to be left on the Farm), for which purpose the Tenant shall have the use of such of the barns and yards as may be necessary until the First day of May next after the end of the tenancy:

[To stack in barns, &c., produce of last year.]

(B) In the last year of the tenancy the Landlord or his incoming tenant shall be at liberty to enter upon the lands for a wheat season so soon as the crop for that year is cleared off, in order to prepare the same for the wheat crop, and may also sow seeds among the Lent or summer corn, which the Tenant shall harrow in:

[Incoming Tenant may enter in last year of tenancy on parts of farm.]

(C) The Tenant shall also leave for the Landlord or his incoming tenant all the hay, straw and roots remaining unconsumed, being paid or allowed for the same at a spending price: (*s*)]

[(30) The Tenant shall sell to the Landlord or his incoming tenant all away-going crops to which the Tenant may be entitled under this agreement according to a valuation of the same to be made in manner hereinafter described, such valuation to be made on or before the Twenty-fifth day of July next after the determination of this agreement, the incoming tenant immediately paying or else giving security to the satisfaction of the outgoing Tenant for the payment of the amount thereof within six months

[Sale of away-going crops. (*t*)]

(*s*) These clauses relating to the last year of the tenancy may be adapted to suit the customs in various districts.

(*t*) Clauses (30) to (34) inclusive are suitable for a Lady Day tenancy in the North Riding of Yorkshire.

from the date of such valuation, subject to the following deductions (namely)—

(a) One year's rent of the said lands for standage according to an average rent per acre of the whole Farm;

(b) The proportion of the usual rates, taxes and assessments imposed upon the Farm; and

(c) The expenses of weeding (if necessary), reaping, threshing and marketing:

[Straw of away-going crops.]

(31) The Landlord or his incoming tenant shall be entitled to the straw of the away-going crop without making any remuneration to the Tenant for the same:

[Notices of lands bearing away-going crops.]

(32) The Tenant shall give notice in writing to the Landlord or his agent on or before the First day of November preceding the determination of the tenancy stating the lands from which the said away-going crops shall be taken, and the Tenant shall not be entitled to take an away-going crop from any lands except those to which the notice applies:

[As to giving up possession of other lands.]

(33) The Tenant shall give up the possession of all such of the arable land as he is not entitled to have an away-going crop from on the First day of January next preceding the determination of this agreement, and all the meadow and pasture lands and buildings on the Sixth day of April then next ensuing, and the land upon which the away-going crop is growing immediately after the valuation of the crop is made:

[Proportion of clover in last year.]

(34) The Tenant shall, in the last year of the tenancy or after he has given or received notice to quit, sow in proper season and in a husbandlike manner not less than one-eighth of the arable land of the Farm as shown in the Schedule hereto with approved clover, hay or grass seed, and the Tenant shall at the time of quitting be paid by the Landlord or his incoming tenant the original cost of all such clover, hay and grass seeds as shall duly and in course of good husbandry have been sown in the spring of the year next preceding, provided that the grain crop with which they are sown has been immediately preceded by a clean fallow or by turnips, mustard or rape eaten upon the lands by sheep where the same are grown:

Provided further, that (if payment therefor is to be made) such seeds shall not have been eaten or damaged by sheep, horses, pigs, cattle or other animals at any time after the sowing thereof:]

Cultivation of arable land during

(35) Subject as aforesaid and to any directions in writing to the contrary which may be given by the Landlord or his agent,

last year of tenancy.

the Tenant shall, during the last year of the tenancy or after he has given or received notice to quit,(*u*) cultivate, sow or otherwise deal with the arable land then forming part of the Farm in such manner as if the following provisions had been in force during the tenancy (that is to say)—

(A) &c. (*State rotation of crops, as required.*)

[*Or say* "in such manner as complies with the best custom of the district in regard to the rotation of crops."]

Agreements by the Landlord.

6. The Landlord hereby agrees with the Tenant as follows :—

Taxes and charges.

(1) To pay or allow a deduction for the landlord's property tax, [land tax] or tithe rentcharge (if any) :

Repairs.

(2) To allow for the necessary repair of any buildings upon the premises, stone at the quarry, bricks, tiles and lime at the kiln, and timber in the rough, on condition that the Tenant conveys the same to the Farm at his own expense and uses them in the needful repairs of buildings in such manner as shall be directed by the Landlord or his agent :(*v*)

Fire.

(3) To reinstate as soon as practicable all buildings destroyed by fire if required for the working of the Farm :

Tenant right.(*w*)

(4) That the Tenant having paid and performed the agreements on his part herein contained shall on the termination of the tenancy be paid by the Landlord or his incoming tenant compensation (after deducting therefrom any sums due to the

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Power to contract as to crops during last year.

(*u*) The provisions of s. 30 (1) of the Agr. H. Act, 1923, do not apply in the case of a tenancy from year to year as respects the year before the tenant quits his holding or any period after he has given or received notice to quit which results in his quitting the holding, or in other cases as respects the year before the expiration of the tenancy. Hence provisions as to cultivation during the last year of the tenancy may be inserted.

(*v*) See *Westacott* v. *Hahn* [1918], 1 K. B. 495 ; 87 L. J. K. B. 555.

Improvements.

(*w*) See as to compensation for improvements: Agr. H. Act, 1923, ss. 1–10 ; Spencer's Agr. H. Acts, 7th ed., 2, *et seq.*; 17, *et seq.* Improvements made by a tenant are there divided into the three classes respectively mentioned in Parts I, II, and III of the First Schedule to the Act. For these improvements he is entitled to obtain compensation on quitting his holding or at the termination of the tenancy. Termination of the tenancy includes the cesser of the contract of tenancy from any cause whatever : s. 57. Where a trustee in bankruptcy disclaims a lease he loses his rights under this section : Bkcy. Act, 1914, s. 54 (2) ; *Schofield* v. *Hincks*, 58 L. J. Q. B. 147. The sitting tenant must have quitted his holding before a right to compensation arises ; but where he has sub-let he may, by reason of the Increase of Rent, &c., Acts, 1920 to 1925, be unable to eject his tenant : *Reynolds* v. *Bannerman* [1922], 1 K. B. 719 ; 91 L. J. K. B. 651. Where the tenant by local custom is not bound to give up the whole holding at the same time, see *Swinburne* v. *Andrews* [1923], 2 K. B. 483 ; 92 L. J. K. B. 889.

Increase of Rent, &c., Acts.

Part I, s. 2 : consent of Landlord.

For improvements in Part I the consent of the landlord is required, and such consent may be given either unconditionally or upon such terms as to

Landlord for breach of any of the Tenant's agreements or otherwise) for improvements made as follows :—

(a) &c. [*State any express provisions as to compensation for improvements required, or say* "for improvements for which compensation is payable under the Agricultural Holdings Act, 1923, or by custom."]

[Substituted compensation.]

[(5) Provided that the compensation prescribed by the preceding sub-clause shall (so far as the law permits)(*x*) be deemed to be substituted for compensation under the Agricultural

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compensation or otherwise as may be agreed upon, and if any such agreement is made any compensation payable under the agreement will be substituted for compensation under the Act: s. 2. Improvements in Part II include drainage only. Compensation is not payable unless previous notice in writing has been given to the landlord, and upon such notice being given the landlord and tenant may agree the compensation. The landlord and tenant may (s. 3 (4)) agree to dispense with any notice under s. 3, and any such agreement may provide for anything for which an agreement after notice under that section may provide.

Part II, s. 3: drainage notice in writing.

Part III: no consent required.

Substituted compensation.

Improvements in Part III do not require the previous consent of the landlord, and by s. 4, when any agreement in writing secures to the tenant "fair and reasonable" compensation, the compensation so secured shall be substituted for compensation under the Act. Save where substituted compensation is permitted, any contract made by the tenant by which he is deprived of his right to claim compensation under the Act in respect of improvements included in the First Schedule is void : s. 50 ; a tenant may elect to claim compensation by custom or agreement if he thinks fit, though the landlord cannot compel him to do so.

Compensation payable by mortgagee in possession.

Under s. 15 a tenant from a mortgagor under a contract of tenancy not binding on the mortgagee is, as against the mortgagee who takes possession, entitled to compensation for improvements, whether under the Act or custom or an agreement authorised by this Act.

Notice to quit by mortgagee.

If the tenancy is from year to year, or for a term of years not exceeding twenty-one at a rack-rent, the mortgagee must give to the tenant six months' notice in writing before depriving him of possession, and the tenant is entitled to compensation for his crops and improvements in so far as the latter are not exhausted at the time the tenant is deprived of possession : s. 15 (2).

Arrears of rent, &c., to be set off.

The amount of any compensation due to the tenant may be set off by the mortgagee against any rent or other sum due from him in respect of the holding : s. 15 (3). The tenant can set off the compensation against his rent : *ib.*

Compensation by trustees.

Special standard.

As to compensation payable by trustees, see s. 37. In addition to the improvements mentioned in the 1st Sch., a tenant is, by the Agr. H. Act, 1923, s. 9, allowed compensation in respect of the continuous adoption of a special standard or system of farming, which has increased the value of the holding to an incoming tenant, other than the standard system or any system required by the tenancy. Accordingly special compensation under s. 9 may be avoided by inserting provisions in the agreement requiring a specially high standard of farming. Where rent has been deducted in respect of such an improved system, the deduction will be ignored where it falls to be decided whether the tenant holds at rack rent : ss. 9 (3), 42. As to compensation for disturbance : ss. 12–14 ; Spencer's Agr. H. Acts, 7th ed., 9, *et seq.* ; 40, *et seq.*

(*x*) See *Cathcart* v. *Chalmers* [1911], A. C. 246 ; 80 L. J. P. C. 143.

Holdings Act, 1923, for improvements included under the above heads :(y)]

[Notice under s. 3, to be dispensed with.]

[(6) The notice required to be given by the Tenant under section three of the Agricultural Holdings Act, 1923, with respect to improvements included in Part II of the First Schedule to that Act shall be dispensed with :]

Evidence of use of cake and manure.

(7) Compensation shall be allowed or paid by the Landlord in respect only of oil and cotton cake or linseed which the tenant shall show to the reasonable satisfaction of the Landlord to have been actually consumed by cattle or sheep kept exclusively upon the Farm and not in respect of oil or cotton cake or linseed consumed by cattle or sheep kept on any other Farm or kept partly on the Farm and partly on such other Farm, and in respect only of manures which the Tenant shall show to the like satisfaction to have been spread on and used for the exclusive benefit of the Farm :(z)

Provided that no additional compensation shall be payable in respect of any oil or cotton cake, linseed or manure, which shall have been brought upon the Farm pursuant to the statutory obligations of the Tenant for the purpose of making a return to the Farm of the full equivalent manurial value of any crops or produce of the Farm sold off or removed from the Farm beyond freeing the Tenant from his liabilities :

Quiet enjoyment.

(8) That the Tenant paying the rents hereby reserved and observing and performing the agreements by the Tenant herein contained, shall and may quietly hold and enjoy the Farm without any interruption from or by the Landlord (meaning thereby the Landlord personally) or any person rightfully claiming through or under him.

General provisions.

Arbitration clause.

7. WITHOUT prejudice to any right of action or other remedy of the Landlord in respect of any claim against the Tenant, all compensation allowances, valuations, damages and dilapidations

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Substituted compensation (Pt. III).

(y) Substituted compensation for improvements under 1st Sch., Pt. III, is not permitted: s. 4.

Farm records.

(z) *Semble*, independently of this clause, satisfactory evidence, *i.e.*, farm records, must be produced that the feeding stuffs and manures have been actually consumed, but the clause should be inserted to remind the tenant of his liability; it cannot restrict compensation: s. 50.

The landlord may claim to have excluded from compensation under Sch. III any manures or other improvements, such as cattle cake, which can be proved to have been used for the purpose of returning to the land substance of equal manurial value to the substances removed from the land under s. 30 (3).

to which either party may claim to be entitled under this agreement or otherwise shall be settled by arbitration in accordance with the provisions of the Agricultural Holdings Act, 1923.(*a*)

Breach of covenant.

8. THE Landlord shall be entitled to damages from the Tenant in respect of any breach of the agreements on the part of the Tenant herein contained, or for any injury to or deterioration of the Farm caused or permitted by the Tenant, and any sum due to the Landlord under this agreement or otherwise shall be deducted from any sum to be paid to the Tenant or be recoverable otherwise as the Landlord may deem fit.(*b*)

Cost of survey.

9. IF the Tenant shall require any record to be made of the condition of the Farm pursuant to section thirty-two of the Agricultural Holdings Act, 1923, then and in such case all costs of and incidental thereto shall be borne by the Tenant.(*c*)

Re-entry.

10. IF any part of the rents hereby reserved shall be in arrear for at least twenty-one days (whether demanded or not), or if there shall be any breach of any of the obligations hereby or by law imposed on the Tenant, or if the Tenant shall have a receiving order in bankruptcy made against him or shall execute an assignment for the benefit of his creditors or suffer an execution to be levied upon any of the chattels upon the Farm, or if a substantial part of the chattels for the time being thereon shall by assignment or otherwise become vested in some other person, then and in any of the said cases the Landlord may at any time thereafter re-enter upon the whole or any part of the Farm in the name of the whole, and thereupon the tenancy hereby created shall absolutely determine, but without prejudice to any claims of the Landlord or Tenant hereunder.

Distress.

11. UPON any seizure by the Landlord under a distress for rent the Landlord shall not be obliged to sell any hay, straw, manure, compost or crops of any description upon the terms that the same shall be removed from the Farm, but the Land-

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Arbitration Act does not apply.

(*a*) The Arbitration Act, 1889, is not applicable: Agr. H. Act, 1923, s.16 (5); Spencer's Agr. H. Acts, 7th ed., 65. Contracts providing for different methods of arbitration are void: s. 16 (1).

Deterioration of holding.

(*b*) As regards the landlord's right to obtain compensation for deterioration to the holding due to the freedom of cultivation conferred on the tenant by s. 30, see s. 10. It is advisable not to rely on s. 10 for any other protection. A provision expressly giving damages is expedient, for a claim under s. 10 must be preceded by notice before the end of the tenancy.

Cost of survey.

(*c*) In default of agreement the cost of making a record of the holding is borne by the landlord and tenant equally: s. 32.

lord may sell the same subject to the condition that the same shall be consumed or used on the premises.(*d*)

Receipt for rent not to discharge penalties.

12. A RECEIPT for rent shall not be a discharge for any money which shall become due or payable for any breach of any agreement herein contained, unless in such receipt it shall be so expressed.

Landlord's power to have corn, &c., cleared of weeds, and ditches cleaned, but at the Tenant's expense.

13. IF the Tenant fails or refuses after notice in writing duly given to him by the Landlord or his agent to keep the growing crops and pulse and the root crops clear of weeds and rubbish, or to maintain properly the fences or to clear out the ditches and watercourses as often as shall be necessary, the Landlord may employ persons for that purpose at the cost of the Tenant, and such cost shall be paid by the Tenant and be recoverable as rent in arrear.

Market garden.

14. (1) ANY asparagus, rhubarb or other perennial crop, or any fruit bushes planted or purchased by the Tenant, may be removed by the Tenant before the termination of his tenancy, he making good and replacing the surface soil disturbed by such removal, unless the Landlord or his incoming tenant elect to take any such plants or bushes at a valuation.

(2) But nothing herein contained shall be deemed to be a consent by the Landlord within the meaning of sections forty-eight and forty-nine of the Agricultural Holdings Act, 1923, to an improvement by the making of any garden or by the planting of any orchards or fruit trees or bushes, nor shall the holding or any part thereof be deemed to be let as a market garden.

Alteration of rent.

15. THE provisions hereof shall not be altered or determined by any increase or decrease in the rent which may be mutually agreed upon by the Landlord and Tenant, except as regards the amount of rent payable.

Notices.

16. SECTION one hundred and ninety-six of the Law of Property Act, 1925, shall apply to any notices to be given hereunder, as well as the provisions of the Agricultural Holdings Act, 1923.(*e*)

Marginal notes.

17. THE marginal notes shall not affect the construction of this agreement.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first above written.

Distress.

(*d*) As to restriction of landlord's power of distress: ss. 34 to 36; Spencer's Agr. H. Acts, 7th ed., 93, *et seq.*

(*e*) Agr. H. Act, 1923, ss. 53, 57 (4).

THE SCHEDULE.

No. on Plan.	Description.	Cultivation.	Acreage.

No. II.

LEASE (*f*) *of a* FARM *for Twenty-one* [*or Fifty*] *Years.* (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN (*parties, as in last Precedent*),

WITNESSETH, in consideration of the rents hereinafter reserved and of the Tenant's covenants herein contained, and it is hereby declared as follows :—

1. THE Landlord hereby demises unto the Tenant:

ALL THAT Farm, &c. (*parcels, as in clause* 1 *of last Precedent*),

EXCEPT AND RESERVED unto the Landlord (*reservations, as in clause* 3 *of last Precedent, p.* 1092),

Habendum.

TO HOLD unto the Tenant from the —— day of ——, 19—, for the term of twenty-one [fifty (*g*)] years,

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Enfranchised land.

(*f*) For variations where the lease is not made by an owner in fee simple, see Forms, pp. 1016, *et seq*,. and notes thereto. Also notes to last Precedent; it is not generally desirable to grant a lease. In the case of enfranchised land affected by manorial incidents, if the lease is not from year to year, or is for more than a year, it must be produced to the steward within six months, and the same fines, &c., must be paid as would have been requisite had the land remained copyhold, and a licence to demise had been required : L. P. Act, 1922, ss. 129, 130 (2).

Small holdings and allotments. Renewable leases.

Though perpetually renewable leases have been converted into long terms by *ib.*, 15th Sch., the powers for a council under Small H. & All. Act, 1908, s. 44, to require a lease to be renewed for not less than fourteen years or more than thirty-five have been saved : L. P. Act, 1922, 15th Sch., para. 9. Under the Act of 1908, s. 40, a limited owner has power to grant renewable leases to a council; this power is also saved by para. 9, *supra*.

Leases for ordinary purposes. Mortgagors or mortgagees in possession. Extension of powers by agreement.

(*g*) Leases for ordinary purposes may be granted by persons in a fiduciary position for terms not exceeding fifty years : S. L. Act, 1925, s. 41 ; L. P. Act, 1925, s. 28 ; Ad. of E. Act, 1925, s. 39. Mortgagors or mortgagees in possession or after a receiver has been appointed, may grant agricultural or occupation leases for terms not exceeding twenty-one years, or if the mortgage is made after 1925, or the statutory provisions have been made applicable by writing, then for terms not exceeding fifty years : L. P. Act, 1925, s. 99 (3). Further or other powers may, by agreement between a mortgagor and mortgagee be conferred either in the mortgage deed or by a separate writing. Such powers will not affect or bind a mortgagee unless he joins in or adopts the

Yielding and paying therefor the rents following—

Rents.

(i) The certain clear yearly rent of £—— by equal half-yearly [quarterly] payments on the —— day of —— [and] the —— day of —— [the —— day of —— and the —— day of ——] in every year, the first payment to be made on the —— day of —— next;

(ii) The additional yearly rents hereinafter mentioned (*penal rents, as in last Precedent, p.* 1096).

Notice of damage by game.

2. For the purposes hereof the period, &c. (*continue as in clause* 4 *of last Precedent, p.* 1095).

Covenants by Tenant.

3. The Tenant hereby covenants with the Landlord as follows:—

(*Insert and adapt covenants corresponding with agreements by the Tenant in clause* 5 *of last Precedent, as required, saying* "covenant" *in place of* "agreement," "this lease" *in place of* "this agreement," and "term hereby granted" *in place of* "tenancy.")

Covenants by Landlord.

4. The Landlord hereby covenants with the Tenant as follows:—

(*Insert and adapt covenants corresponding with agreements by the Landlord in clause* 6 *of last Precedent, as required, saying* "covenant" *in place of* "agreement," "this lease" *in place* *of* "this agreement," *and* "term hereby granted" *in place of* "tenancy.")

5 to 15. (*Adapt clauses* 7 *to* 17 *in last precedent, pp.* 1105, *et seq.*).

In witness, &c. (*Schedule, as in last Precedent*).

No. III.

AGREEMENT *for a* Lease *of a* Grazing Farm (*gg*) *from Year to Year with reference to the Agricultural Holdings Act,* 1923. (*Legal Estate.*)

Parties.

AN AGREEMENT, made, &c. (*date and parties, as in Prec.* I, *p.* 1090):

Underleases; a nominal reversion must be reserved. *Secus*, on a sale.

agreement: *ib.*, s. 99 (14). A lease (*i.e.*, an underlease) affecting leaseholds comprised in a mortgage must reserve a reversion of not less than one day: *ib.*, s. 99 (15); thus the mortgagor or mortgagee, when leasing, cannot assign the term affected by his mortgage, though if a mortgagee sells, the whole term will be transferred to the purchaser, unless the court authorises him to sell by way of sub-demise: *ib.*, s. 89.

Covenants "for self and assigns."

As to covenants being implied on behalf of "assigns" without being mentioned: *ib.*, s. 79.

(*gg*) Restrictions as to cultivation may be imposed by the lease as respects pastoral land, see note to Prec. I.

WHEREBY, in consideration, &c., IT IS AGREED as follows :—

1. (*Agreement to let and take, parcels, term and rents, as in clause* 1 *of Prec.* I, *p.* 1091.)

2. (*Termination of Tenancy, as in clause* 2 *of Prec.* I, *p.* 1092.)

3. (*Reservations to Landlord, as in clause* 3 *of same Precedent, so far as required.*)

Agreements by the Tenant :—

4. THE Tenant hereby, for himself and his assigns, agrees with the Landlord as follows :—

To pay rents, rates and taxes.

(1) and (2) (*To pay rents, rates and taxes, as in clause* 5 *of Prec.* I, *p.* 1095) :

Additional rents.

(2) To pay the following additional rents and liquidated damages—

(*Insert and adapt penal rents, as in clause* 5 (4), (A) *and* (B), *of Prec.* I, *p.* 1096) :

Repairs of buildings, &c.

(3) (*To repair buildings, &c., as in clause* 5 (5) *of same Precedent, p.* 1096, *if required*) :

Roads, fences, drains, &c.

(4 (*To keep roads, fences, drains, &c., in repair, as in clause* 5 (6) *of same Precedent*) :

Hedges.

(5) (*To keep hedges trimmed, &c., as in clause* 5 (10), *p.* 1097, *of same Precedent*) :

Permanent pasture.

(6) To keep the Farm as meadow or pasture land for grazing purposes, and for hay only :

Not to break up permanent pasture.

(7) Not to break up any of the meadow or pasture land on the Farm without the previous written consent of the Landlord or his agent, nor to mow the same or any part thereof more than once in any year,(*h*) nor in two successive years, without applying thereto not less than ten tons per acre of good rotten dung or other manure equivalent thereto :

To weed the Farm and keep pasture land clean.

(8) To spud up, cut and destroy all thistles, nettles and other weeds throughout the Farm and keep down moles and spread all mole hills, and to keep the grass lands clean and in good heart and condition :

Preservation of timber.

(9) (*To preserve timber, &c., as in clause* 5 (18) *of Prec.* I, *p.* 1099) :

Waste encroachment and trespass.

(10), (11) and (12) (*Not to commit waste, &c., as in clause* 5 (19) *to* (21), *p.* 1099, *of same Precedent*) :

Preservation of game.

(13), (14) and (15) (*To preserve game, as in clause* 5 (22) *to* (24) *of same Precedent*) :

(*h*) Permanent grass lands are excepted from the provisions of s. 30 of the Agr. H. Act, 1923, *ib.*, sub-s. (4).

(16) (*To reside on the farm, and not to underlet, &c., as in clause* 5 (25), *p.* 1100, *of same Precedent*) : Underletting, &c.

(17) (*To yield up at end of tenancy, as in clause* 5 (28), *p.* 1100, *of same Precedent*) : To yield up in good condition.

5. THE Landlord hereby agrees with the Tenant as follows— Agreements by the Landlord.

(i) (*To pay landlord's property tax, &c. Adapt clause* 6 (1), (2), (3), (7), (8), *and* (9), *of Prec.* I, *p.* 1103.) Taxes and charges.

6. (*Proviso for re-entry, as in clause* 10 *of same Precedent.*) Re-entry.

7. (*Arbitration clause, as in clause* 7 *of same Precedent, p.* 1105.) Arbitration.

8, 9, and 10. (*Alteration of rent, notices and marginal notes, as in clauses* 15, 16, *and* 17 *of same Precedent, p.* 1107.)

IN WITNESS, &c. (*Add Schedule*).

No. IV.

LEASE *of* LAND *for the purposes of a* MARKET GARDEN (*i*) *for a term of Years with reference to the Agricultural Holdings Act*, 1923. (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made, &c. (*date and parties as in Prec.* I, p. 1090),

WITNESSETH, in consideration of the rent and Tenant's covenants hereinafter respectively reserved and contained, and it is hereby declared as follows :—

1. THE Landlord hereby demises unto the Tenant : Lease of land.

ALL THOSE pieces of land containing — a. — r. — p. or thereabouts, situated in the Parish of ——, in the County of ——, together with the [messuage, cottages] greenhouses, hothouses, pits, frames and other buildings erected thereon, which said properties are more particularly delineated on the plan hereto and thereon edged pink,

TO HOLD unto the Tenant for the term of —— years from the —— day of ——, 19— [determinable as hereinafter mentioned], for the purpose of being used and treated as a market garden,(*j*) Term.

(*i*) For the special provisions as to market gardens : Agr. H. Act, 1923, ss. 48, 49. It is a matter for bargain whether these sections are to apply ; if made applicable, the tenant may remove fruit trees and bushes during the tenancy ; if he does not remove them, no compensation is payable therefor : s. 48 (1) (iii). The provisions of the Act, as varied by ss. 48 and 49, apply to market gardens which are included in the definition of a holding : s. 57. Removal of fruit trees.

(*j*) In the case of a tenancy commencing after 1895 it is necessary, to entitle a tenant to compensation for improvements within the Third Schedule to the Agr. H. Act, 1923, that it should be agreed in writing that the holding shall be let or treated as a market garden : s. 48 (1). As to tenancies current Compensation for improvements in Third Schedule to the Act.

YIELDING AND PAYING therefor during the term hereby granted the yearly rent of £——, payable by equal quarterly [half-yearly] payments on the —— day of —— [and] the —— day of —— [the —— day of ——, and the —— day of ——] in every year, the first payment thereof to be made on the —— day of —— next.

Covenants by Tenant :—

2. THE Tenant hereby covenants with the Landlord as follows :—

To pay rent, rates, and taxes.

(1) To pay the rent hereby reserved at the times and in manner aforesaid :

(2) To pay all rates, taxes, assessments, impositions and other outgoings for the time being charged or imposed upon the premises hereby demised, or upon the owner or occupier in respect thereof, [land tax,] landlord's property tax and tithe rent-charge (if any) only excepted :

To keep buildings in repair.

(3) At all times during the term hereby granted to keep the buildings and premises and every part thereof (including all fixtures and additions thereto) in good tenantable repair, and once in every —— years of the said term, and in a proper and workmanlike manner to paint the inside woodwork and ironwork usually painted of the premises with at least two coats of good oil colour, and once in every fourth year of the said term to paint with at least two coats of good oil paint all the outside glass, woodwork and ironwork and other work usually painted, including gates and fences previously painted, and to tar all such parts as have formerly been tarred :

Drains, &c.

(4) To keep in repair and cleanse all drains, ditches, wells and watercourses :

To preserve trees, &c., permanently set out.

(5) To preserve, cultivate, prune, winter wash (with a caustic alkali preparation) and keep free from blight and moss all fruit and other trees, fruit bushes, vines and other plants permanently set out on the premises, and not without the previous consent in writing of the Landlord to cut down or remove any of such trees, bushes or plants except such as are dead or useless for fruit-bearing purposes, and from time to

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on the 1st January, 1896, where the holding was at that date in use as a market garden with the knowledge of the landlord, see s. 48 (2); "Then" in this sub-section means "thereafter": *Taylor* v. *Steel-Maitland* [1913], S. C. 562; see also the Agr. H. Act, 1913, s. 1 (now repealed), reversing the decision in *Re Kedwell and Flint* [1911], 1 K. B. 797; 80 L. J. K. B. 707 (relating to the determination of yearly tenancies current on the 1st January, 1896); and see now Agr. H. Act, 1923, s. 48 (2).

time to replace all such trees, bushes or plants so cut down or removed:

(6) To permit the Landlord or his agent, with or without workmen and others, at all convenient hours in the day time during the term hereby granted, to enter into and upon the premises and examine the state and condition thereof:(*k*) And to repair and make good all defects for which the Tenant is liable hereunder, of which notice in writing shall be given to the Tenant by the Landlord within three months after the giving of such notice: To permit Landlord to enter and examine, and Tenant to make good defects.

(7) Not to cause or permit any nuisance on the premises, or to do or suffer anything whatsoever which may be an annoyance to the neighbouring owners or occupiers, and to use the premises for the purposes of a market garden only: Not to permit nuisances.

(8) Not to assign, underlet or part with the possession of the premises or any part thereof without the previous written consent of the Landlord: Not to assign or underlet.

(9) At all times during the term hereby granted to keep the land hereby demised free from weeds, well manured, and in good garden culture, and to manage and work the premises in accordance with the most approved methods of market gardening in the district:(*l*) To keep in garden culture.

(10) At the expiration or sooner determination of the term hereby granted to deliver up the premises to the Landlord in such good tenantable repair and in such good order, state and condition as the same ought to be in having regard to the provisions herein contained. To deliver up at end of term.

3. IF any part of the yearly rent hereby reserved shall be in arrear for twenty-one days (whether legally demanded or not), or if there shall be any breach of any of the covenants by the Tenant herein contained, or if the Tenant shall become bankrupt or make an arrangement or composition with his creditors or suffer an execution to be levied upon any of the chattels upon the premises, then and in any of the said cases the Landlord may at any time thereafter re-enter upon the demised premises or any part thereof in the name of the whole, and thereupon the term hereby granted shall absolutely cease, but without prejudice to any claims by the Landlord and Tenant hereunder. Re-entry.

(*k*) See s. 28.

(*l*) This may prevent the operation of s. 9, but otherwise will not be effective except in the last year of tenancy: s. 30.

Resumption of possession for building purposes.

4. THE Landlord may from time to time during the term hereby granted resume possession of any part of the premises hereby demised which he may from time to time require for making roads, or for building purposes, or for carrying out any building scheme, but subject to the following provisions :—

Notice of intention to resume possession.

(1) The Landlord shall give to the Tenant not less than six months' notice in writing of his intention to resume possession of all or any part of the premises, and shall in such notice shortly describe the lands to which the notice is intended to relate :

Other land to be substituted or rent reduced.

(2) The Landlord shall either substitute other land for the land to be taken or shall allow to the Tenant a reduction of the rent hereby reserved at the rate of £— per acre per annum, and so in proportion for any less quantity than an acre in respect of the land of which the Landlord resumes possession, and as from the date when the Landlord takes possession :

Provided that the Tenant may, on account of the situation or condition of the soil, refuse to accept any land proposed to be substituted by the Landlord and require that the rent shall be reduced or may accept such substituted land at a reduced rent :

Tenant to remove crops from land taken.

(3) The Tenant shall, before the expiration of the notice, and unless the season of the year renders the removal impracticable, remove from the land to be taken to other parts of the premises hereby demised, or to the land to be substituted as hereinbefore mentioned, all the fruit trees, bushes and crops belonging to the Tenant on the land to be taken :

Limitation of compensation

(4) If the Tenant shall, after the date of any such notice (or during the last year of the term hereby granted), plant any fruit or other trees, shrubs or plants of a permanent nature, or otherwise of such a nature as to involve a heavy claim for compensation he shall remove the same at his own risk before the expiration of the notice or of the said term (as the case may be), and shall not be entitled to any compensation therefor :(*m*)

Compensation for crops not capable of removal.

(5) The Landlord shall pay to the Tenant compensation for all crops (other than crops not removed by reason of the default of the Tenant) which cannot be removed or secured before the expiration of the notice and which may be growing on the land so taken, and also for unexhausted manure laid or applied within one year before the date when the Landlord takes possession, provided that such manure was essential for the purposes of the crop :

(*m*) See s. 48 (1) (iii).

(6) So far as the law will permit (*n*) the provisions hereby made for the compensation of the Tenant shall be accepted in lieu of those to which the Tenant might be entitled under the Agricultural Holdings Act, 1923.

Substituted compensation.(*o*)

[5. If the Tenant shall be desirous of determining the term hereby granted at the end of the first —— or —— years of the said term, and of such desire shall give to the Landlord or his agent at least six months' previous notice in writing, then and in such case at the end of such —— or —— year, as the case may be, the term hereby granted shall cease, but without prejudice to the rights of the Landlord and Tenant hereunder.]

[Power for Tenant to determine tenancy at end of —— or —— years.]

6. The Landlord hereby covenants with the Tenant that the Tenant, paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the part of the Tenant to be observed and performed, shall and may peaceably and quietly possess and enjoy the premises hereby demised during the term hereby granted, without any interruption from or by the Landlord (meaning thereby the Landlord personally) or any person rightfully claiming from or under him.

Quiet enjoyment.

7. (*Insert and adapt Arbitration clause, as in clause* 7 *of Prec.* I *of this Section, p.* 1105)

Arbitration clause.

8 and 9. (*Clauses as to notices and marginal notes, as in clauses* 16 *and* 17 *of same Precedent, p.* 1107)

Notices and marginal notes.

In witness, &c.

SECTION V.

MINING LEASES.

No. I.

LEASE *of the Upper Seams of* COAL (*p*) *under surface partly owned by the* LESSOR *and partly owned by a* STRANGER *with* SURFACE *rights. Reservation of* ACREAGE *royalties* (Lancashire Form). (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where

Parties.

(*n*) See s. 4; also s. 48 (1).

(*o*) A contract to secure substituted compensation for improvements contained in 1st Sch., Pt. III, is invalid if the matter is not agreed: s. 4.

(*p*) See Coal Mines Act, 1911. The alterations imposed by this Act are "improvements" under S. L. Act, 1925, ss. 73 (1) (iii), 83, 3rd Sch.: *Re*

Mining regulations.

the context admits, includes the persons deriving title under him),(q) of the one part, and the X. Company, Limited, whose registered office is at —— (hereinafter called the Tenants, which expression, where the context admits, includes the persons for the time being entitled to the term hereby granted), of the other part :(r)

WITNESSETH, in consideration of the rents and royalties hereinafter reserved and the covenants by the Tenants herein contained, and it is hereby declared as follows :—

Demise and Grant of Rights.

Demise.

Mines under lands belonging to Lessor, top seams only.

1. The Lessor hereby demises unto the Tenants :

All those mines, beds, veins, and seams of coal and cannel [ironstone, limestone, sandstone, fireclay, brick earth, common clay, chalk, and other mineral substances] from the surface down to and including the mine, bed, vein or seam called the —— Seam, as well opened as unopened,(s) lying and being within and under :

First, All those lands situated in the Township of ——, in the County of ——, containing together —— acres or thereabouts,(t) more particularly described in the first part of the Schedule hereto, and delineated (whether or not hatched) on the plan hereto and thereon coloured —— (the surface whereof as well as the minerals thereunder belong to the Lessor) :

Hanbury [1913], 1 Ch. 50 ; 82 L. J. Ch. 34. As to mineral rights duty, see last chapter, p. 995, *supra*. As to compulsory acquisition of rights of support and the right to cause subsidence, and other mining rights : Mines (Working Facilities and Support) Act, 1923, as extended by the Mines (Working Facilities and Support) Act, 1925 ; see also last chapter, p. 994. The long wall system is usually adopted in Lancashire.

Capitalisation of rent.

(q) If the lessor is not entitled to the fee simple, see Forms, Sect. I, pp. 1016 *et seq*., and notes thereto. If the lease is granted under the powers of the S. L. Act, a part of the mining rent must, unless the settlement otherwise provides (see *Re Daniels* [1912], 2 Ch. 90 ; 81 L. J. Ch. 509), be capitalised : see S. L. Act, 1925, s. 47 ; also Prec. IV of this Section, *infra*. This applies whether the lease is granted by a tenant for life, trustees for sale or personal representatives.

Leasing powers of fiduciary owners.

(r) Fiduciary owners can grant mining leases for a term not exceeding 100 years : S. L. Act, 1925, s. 41 (ii) ; L. P. Act, 1925, s. 28 ; Ad. of E. Act, 1925, s. 39. See also S. L. Act, 1925, ss. 42, 43, 45, 46, 64, 117 (1) (xv) ; as to options and boring agreements : *ib.*, s. 51 ; and as to separate dealings with surface and minerals : *ib.*, s. 50.

Unopened mines.

(s) *Re Daniels* [1912], 2 Ch. 90 ; 81 L. J. Ch. 509 ; *Re Morgan* [1914], 1 Ch. 910 ; 83 L. J. Ch. 573.

Identity.

(t) See *Davis* v. *Shepherd* (1866), L. R. 1 Ch. 410 ; 35 L. J. Ch. 581, as to identity where there is a fault in the seam.

And mines under lands not belonging to Lessor.

[AND] SECONDLY, ALL THOSE lands situated in the said Township of ——, containing —— or thereabouts, more particularly described in the second part of the Schedule hereto and delineated on the said plan and thereon coloured —— (the surface whereof belongs to ——, Esq., but the mines thereunder are vested in the Lessor):

Privileges.

TOGETHER with the easements, rights and privileges to be exercised in connexion with the said mines and premises hereinafter mentioned:

[Surface lands.]

[AND THIRDLY, ALL the surface of the lands coloured ——, and hatched —— on the said plan, being part of the lands first above mentioned:

TOGETHER with the buildings, coke ovens, railways, and other works erected on parts thereof]:

Habendum.

TO HOLD (except and reserved as hereinafter mentioned) unto the Tenants for the term of [sixty] one hundred years from the —— day of ——,

YIELDING AND PAYING therefor (*u*) the rents and royalties hereinafter reserved, and subject to the provisions hereinafter contained.

RIGHTS TO BE EXERCISED BY TENANTS.(*v*)

Grant of liberty for Lessees to work mines.

2. THE Tenants may at all times during the term hereby granted work and get the mines hereby demised, and manufacture and carry away the produce thereof, and for that purpose and in connexion therewith (but subject to the restrictions and conditions hereinafter contained) have and exercise in, over, upon or under the lands (hereinafter referred to as the mineral area) under which the said mines lie (but as regards the lands secondly hereinbefore described, so far only as it is competent for the Lessor to grant the same), all necessary and proper easements, rights and privileges, and in particular do all or any of the following things (namely):—

To sink pits, provide for welfare, &c.

(1) Sink, drive, make, erect, set up and construct pits,(*w*) shafts, levels, airways, waterways, engines, machinery,

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Reservation of rents.

(*u*) In the case of a lease under the S. L. Act it is desirable to reserve the rents and royalties generally, and not expressly to the Lessor: S. L. Act, 1925, s. 47.

Table of arrangement of clauses.

(*v*) This and the other headings may be employed when convenient. They facilitate reference, particularly if a Table of Arrangement of Clauses is prefixed to the mining lease.

Right to sink.

(*w*) See MacSwinney on Mines, 5th ed., 137. The right to sink pits creates an interest in the land: *Re Masters and G. W. Ry. Co.* (1901), 2 K. B. 84; 70 L. J. K. B. 516.

furnaces, kilns, ovens, workmen's cottages, baths, drying and changing rooms, shops, club houses, medical, surgical and welfare accommodation (including gardens and recreation grounds) for workmen, their families and dependents, railways, tramways, and other ways, canals, cuts, wharves, erections, and other works, and use all existing works of the above description belonging to the Lessor:

To deposit coal, &c.

(2) Deposit upon a convenient part of the surface of the lands first hereinbefore described all coal, cannel and slack gotten from the said mines, and all earth and spoil brought to the surface therewith, and all materials used in the working thereof:

To appropriate water.

(3) Appropriate and use for any purpose connected with the working of the said mines any water (*x*) within the mineral area, and make and construct watercourses, reservoirs and ponds for collecting such water, but so that in the exercise of this privilege the Tenants shall not deprive any house, mill, or watering place for cattle of a reasonable quantity of water as before accustomed, and shall not in any manner foul, impregnate, or otherwise deteriorate any springs or streams of water, so as to render the same useless and unprofitable:

To get clay, &c., for building.

(4) Get and dig clay, gravel, sandstone and slate from the mines hereby demised and from the lands first hereinbefore described, and burn clay into bricks for the purposes of the works hereby authorised [but not for sale]:

To let down surface of land belonging to Lessor.

(5) To exercise the rights aforesaid (subject as hereinafter provided) without leaving any subjacent or lateral support for the surface of the lands first hereinbefore described, or any buildings now or hereafter to be erected thereon, or for any adjoining lands or minerals of the Lessor, but paying to the Lessor full compensation for all damage which may occur by reason of the exercise of such rights to the said surface buildings and adjoining lands and minerals, and keeping the Lessor effectually indemnified from all claims and proceedings by the lessees

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Percolating water.

Grants of water rights.

(*x*) As to the distinction between a stream running in a defined course and percolating water, see *McNab* v. *Robertson* (1897), A. C. 129; 66 L. J. P. C. 27. For the power for fiduciary owners to grant water rights to statutory bodies: S. L. Act, 1925, s. 54; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

or occupiers of the surface or of any adjoining lands and minerals, and if any difference arises as to the amount of compensation, the same shall be submitted to arbitration : (*y*)

As to surface of land not belonging to Lessor.

(6) To exercise (subject as hereinafter provided) such rights (if any) as the Lessor may have to let down the surface of the lands secondly hereinbefore described and any buildings thereon, or any adjacent minerals, but keeping the Lessor indemnified against all proceedings, costs, claims and demands in respect of any damage thereto.(*z*)

Restrictions as to sites for surface works.

3. No pit or shaft shall be sunk, and no building or thing erected or set up, and no other surface operation carried on by virtue of the privileges hereinbefore granted in or upon the demesne lands of —— house or any part thereof, nor (without the Lessor's consent) upon the site of any house or building, or any courtyard, fold, garden or orchard attached or belonging to any house or building, nor shall any land be taken or occupied for any surface operation, if the same shall be required for working any mines of the Lessor not included in this Lease, or for the purpose of any of the works connected with such mines, and any other land not so required shall be suitable and convenient and equally available for such surface operations.

Coke ovens to consume their own smoke.

4. No coke ovens shall be erected or set up in such a position that any damage or inconvenience may thereby arise to existing buildings, and all coke ovens shall (as far as is reasonably practicable) consume their own smoke.

Notice to be given before entering on surface, and Lessor to be at liberty to object to proposed site.

5. (1) Before taking any [additional] land for surface operations, the Tenants shall give to the Lessor or his agent at least one month's previous notice in writing, and shall also give a similar notice to the lessees or occupiers of the land proposed to be taken, or leave such notice at their respective usual places of abode, and every such notice shall properly and correctly specify by name or other sufficient designation, and by quantity,

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Rights to let down.

(*y*) A right to mine may not necessarily imply a right to let down the surface, see p. 995, *supra*, and MacSwinney, 5th ed., p. 200. It is necessary to provide that the mining lessee shall compensate the lessor for subsidence, otherwise the lessor would become liable to pay compensation in respect of his covenant for quiet enjoyment to any person to whom the surface had been previously leased or sold: *Jones* v. *Consolidated Anthracite Collieries* [1916], 1 K. B. 123; 85 L. J. K. B. 465.

Additional rights.

(*z*) If these rights are not sufficient, additional rights may be acquired by the lessee under the Mines (Working Facilities and Support) Act, 1923, Pt. I, as amended. Similarly, such rights as the lessor has may be restricted by proceedings under that Act.

the land proposed to be taken, and the purpose for which the same is required:

(2) The Lessor or his agent may at any time within one month from the receipt of such notice state his objections (if any) to the proposed site, and the validity of such objections shall be determined by arbitration:(a)

[Provided, that no part of the lands secondly hereinbefore described shall on any account be taken for surface operations.]

Lessees may remove moveable machinery, &c., within six months after end of lease.

6. The Tenants may at any time within six months after the end of this Lease carry away and dispose of any coal or other minerals which shall have been raised during the said term, and remove all plant, machinery and utensils upon or under the mining area being in the nature of trade or Tenant's fixtures, or other moveable things of the Tenants, which the Lessor shall not elect to purchase under the provision for that purpose hereinafter contained, but the Tenants shall pay to the Lessor compensation for any damage done to any building or land to which any fixture, plant, or machinery so removed is affixed, the amount of such compensation, unless agreed, to be determined by arbitration.(b)

Rights Reserved to Lessor.

Reservations to Lessor.

7. The following rights, liberties and privileges are reserved to the Lessor out of this demise (that is to say):—

Liberty for Lessor to work other mines and to use the works of the demised mines for that purpose.

(1) Liberty for the Lessor, and any lessee or other person authorised by him for that purpose, to enter into and upon the lands first hereinbefore described or any of them, and to search for, dig, work, and get all or any of the mines and minerals and other substances under the mining area which are not included in this Lease, and for the purposes aforesaid to sink, make, erect, and use such pits, shafts, levels, drains, watercourses, reservoirs, tunnels, buildings, engines, machinery, canals, railways, waggonways and other ways, works and conveniences upon, through or under the mining area and the mines hereby demised, and the workings of the Tenants hereunder as shall be necessary or expedient; And also for the purposes aforesaid to use any existing pits or shafts and other works in and upon the

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(a) See the clauses as to the selection of sites for surface operations in the next Precedent, which may be substituted (if desired) for those in the text.

Trade fixtures.

(b) Independently of contract, trade fixtures may be removed during the term, provided that such removal causes no material damage to the land or buildings demised: Woodfall, 21st ed., 790.

mining area not required by the Tenants for the purpose of the mines hereby demised ; And also to use (in common with the Tenants) any canals, railways, waggonways or other ways now existing, or which may hereafter be made by the Tenants under the authority hereof, and to cross or intersect any such last-mentioned canals, railways, waggonways or other ways, with or by any canals, railways, waggonways or other ways to be made under the powers hereby reserved :

To let down the demised mines.

(2) Liberty for the Lessor and any lessee or other person authorised by him for that purpose in reference to the mines and minerals excepted out of this demise to exercise all such rights and privileges as are hereby conferred on the Tenants in reference to the mines, minerals, and surface rights hereby demised, including the right to let down the mines and minerals hereby demised and the works of the Tenants, but paying to them full compensation for all physical damage resulting from subsidence, the amount of such compensation to be settled by arbitration in default of agreement :

Priority as to surface rights.

(3) Provided that if the Tenants require to use any part of the surface not previously used in connexion with mining purposes, the claims of the Tenants hereunder shall have priority over the claims of the Lessor or any lessee of the excepted mines and minerals in respect of such surface :

Not to interfere with exercise of Lessees' privileges.

(4) The said reserved rights and privileges shall be exercised and enjoyed in such manner as not to hinder or interfere more than necessary with the rights and privileges of the Tenants hereunder :

Lessor to contribute to expense of keeping in repair canals, railways, &c., used in common.

(5) If the Lessor or any person authorised by him as aforesaid shall use any canal, railway, waggonway or other way in common with the Tenants under the said reserved rights, the Lessor or other the person using the same as aforesaid shall contribute a fair proportion of the expense of keeping the same in repair and working order, the amount of such proportion to be settled in case of difference by arbitration :

To compensate Lessees for damage done in exercise of reserved privileges.

(6) Fair and proper compensation shall be paid by the Lessor or other the persons for the time being exercising the said reserved rights and privileges to the Tenants for all loss, damage, or injury which they may sustain or incur by reason of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.(c)

Lease of lower seams.

(c) Where a lease of the lower seams is granted during the subsistence of a lease of the upper seams, the lease of the lower seams should be made expressly

RENTS AND ROYALTIES RESERVED.

Certain or minimum yearly rent.

8. (1) THE certain yearly rent of £—— shall be paid by the Tenants [to the Lessor] in respect of the mines and mining rights hereby demised by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first half-yearly payment to [be deemed to have] become due on the —— day of ——:

Workings in respect of minimum rent.

(2) The Tenants may, in every year of this demise in respect of the said certain yearly rent, work and get from or out of the demised mines and premises such a quantity of coal and cannel as at the rates hereinafter mentioned would yield or pay for that year footage or acreage royalties equal in amount to the said certain yearly rent of £——:

Provided that the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

Footage or acreage royalties (*d*) for coal only.

9. THE following footage or acreage royalties shall be paid by the Tenants [to the Lessor] in respect of all coal and cannel gotten from or out of the demised mines and premises over and above the quantity which the Tenants are hereinbefore authorised to work and get in respect of the said certain yearly rent (that is to say):—

Cheshire acre.

(1) The royalty of £—— for every Cheshire acre of one foot in thickness (meaning by the term "Cheshire acre" an acre reckoned after the accustomed measure of eight yards to the perch), and so in proportion for any less quantity than an acre, and for a greater or less thickness than one foot, of coal and cannel gotten from or out of the seams called the —— Seam and the —— Seam respectively, or either of them:

(2) The royalty of £—— for every Cheshire acre of one foot in

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The right to support.

subject to the rights of the lessees of the upper seams. The lessee of the lower seams should be given notice of the contents of the lease of the upper seams, and should indemnify the lessor against claims by the upper lessees: see Prec. V, *infra*. The presumption in favour of the lessee of a higher seam to support is more easily rebutted than the presumption in favour of the owner of the surface: *Butterley Co.* v. *New Hucknall, &c., Co.* [1910], A. C. 381; 79 L. J. Ch. 411.

Presumption as to right to support.

Mineral rights duty.

(*d*) Mineral rights duty is not payable in respect of common clay, common brick clay, common brick earth or sand, chalk, limestone or gravel: Fin. (1909–10) Act, 1910, s. 20 (5), but is payable in the case of salt pumped from brine: *Att.-Gen.* v. *Salt Union* [1917]. 2 K. B. 488; 86 L. J. K. B. 1026; and see *Anstruther* v. *I. R. C.* [1912], Sc. Cas. 1165. Hence any royalties payable in respect of such substances should be separately reserved, and the minimum rent should be apportioned between the exempted substances and the other minerals demised, see next Precedent.

thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the seams, called the —— Seam and the —— Seam respectively, or either of them :

(3) And the royalty of £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the other mines or seams hereby demised or any of them :

(4) The said footage or acreage royalties shall be paid by half-yearly payments on the —— day of —— and the —— day of —— in each year in respect of the coal and cannel gotten during the then preceding half-year :

Provision for making up under workings during the next — years.

(5) Provided that if in any year of the said term the Tenants shall not work and get from or out of the demised mines and premises such a quantity of coal or cannel as at the rates abovementioned would produce or yield footage or acreage royalties equal in amount to the said certain rent of £——, then and as often as the same shall happen the Tenants may, during the next —— years of the said term, or any of them (but not afterwards), work and get from or out of the demised mines and premises such a quantity of coal and cannel as shall be required to make up such deficiency without paying any royalty or rent for the same other than the said certain rent.

Abatement to be made for coal left to support buildings, &c.

10. A DEDUCTION or abatement shall be made in making or taking the yearly calculation or measurement for the purpose of ascertaining the footage or acreage royalties payable for the then preceding year—

(i) On account of all coal left for the support of buildings under the provision for that purpose hereinafter contained, or

(ii) For faulty, thin or bad coal, or

(iii) For protection against water :

Provided that no such deduction or abatement shall be made on account of any pillars, walls or ranges which may be left in the mines otherwise than for the support of buildings, or for faulty, thin or bad coal, or for protection against water as aforesaid, but all such pillars, walls or ranges (other than as aforesaid) shall be paid for in like manner as if the coal constituting the same had been actually gotten from or out of the demised mines.

Surface rent.(e)

11. (1) THE further yearly rent of £—— shall be paid by the

Mineral rights duty not claimed on surface rents.

(e) The I. R. Commrs. do not claim mineral rights duty in respect of surface rents where land is let to mining lessees : 56 Sol. J. 312.

Tenants [to the Lessor] in respect of every Cheshire acre of land belonging to the Lessor, the surface whereof [is hereby demised or which] shall be occupied or used by the Tenants for any of the purposes of this demise, and so in proportion for any less quantity than an acre, the said surface rent to be paid by equal half-yearly payments on the same days as the said certain rent of £—— is hereinbefore made payable, and the first half-yearly payment or proportionate payment thereof to be made on such of the said days as shall happen next after such occupation or use shall commence and the last half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall have ceased and the land shall have been restored and rendered fit for cultivation again:

(2) If any difference shall arise as to what ought to be considered the occupation or use of the surface of any land for the purpose aforesaid, or as to the day on which such occupation or use shall have commenced, or as to the amount of rent payable under the reservation aforesaid, the matter in difference shall be settled by arbitration:

[Provided that no such rent shall be paid or demanded in respect of any spoil banks, roads or ways now in existence and not used by the Tenants.]

THE LESSEES' COVENANTS.

Covenants by Lessees:—

12. THE Tenants hereby [jointly and severally] covenant with the Lessor in manner following, namely:—

To pay rents.

(1) To pay the rents and royalties reserved by this lease at the times and in the manner hereinbefore appointed, and to observe and perform the provisions herein contained, which are or ought on the part of the Tenants to be observed and performed:

To pay rates and taxes.(*f*)

(2) To pay (in addition to the rents and royalties hereby reserved) and discharge all taxes, rates, assessments, duties, charges and impositions whatsoever which now are or during the said term shall be charged or imposed upon the demised premises or any part thereof, or upon the owner or occupiers thereof by authority of Parliament or otherwise, except landlord's property tax and mineral rights duty:

To work without

(3) During the continuance of this demise to work and get

(*f*) Mineral rights duty cannot be imposed on the lessees: Fin. (1909–10) Act, 1910, s. 20 (4) the mines hereby demised in a skilful and workmanlike manner,(*g*) according to the most approved practice of mining in the district, and as to each and every of the mines when opened without voluntary (*h*) intermission, and to keep all the pits and shafts, machinery and works belonging to and used in connexion with the said mines in good repair, working order and condition:

intermission, &c.

To fence off pits, &c.

(4) At all times during the continuance of this demise to effectually fence off (*i*) and keep fenced off from the adjoining lands with good and substantial posts and rails all the pits, shafts, banking room, roads, railways, canals, reservoirs, clay pits and other places and conveniences made or used for working and carrying on the said mining operations, and to maintain sufficient roads, gates, stiles and fences for the convenient occupation of such lands, and for the passing and repassing by the Lessor and his tenants, agents and servants, and others on foot, or with or without horses and other animals, carts, carriages, motors, and other vehicles to and from the lands in the occupation of the Tenants, for all purposes whatsoever:

Not to work within certain distance of

(5) To leave such barriers as may be required to prevent the flooding of the mines, and not to work the mines hereby demised

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Covenant to work.

(*g*) See *Lewis* v. *Fothergill* (1869), L. R. 5 Ch. 103; *Brewer* v. *Rhymney Iron Co.* [1910], 1 Ch. 776; 79 L. J. Ch. 334. A covenant to "fairly and honestly work" does not entitle the lessee to stop working because he does so at a loss: *Charlesworth* v. *Watson* [1906], A. C. 14; 75 L. J. K. B. 137. As to the effect of a covenant to "immediately or as soon as may be after this demise proceed to open and get the mines": *Eckersley* v. *Wigan, &c., Co.* (1910), 103 L. T. 468.

(*h*) It is conceived that the word "voluntary" will relieve the lessees from liability under the covenant in case of strikes, influx of water, &c., but the following proviso may be added, if desired:—

Provisions as to strikes, &c.

Provided that the foregoing covenant shall not be binding on the Tenants if at any time during the subsistence of the term hereby granted they shall be unable to comply therewith by reason of strikes, lock-outs or other unavoidable causes, and whether arising from the acts or defaults of their workmen, damage by fire, water or otherwise, and if any difference shall arise upon the construction of this clause the matter in dispute shall be referred to arbitration.

Statutory obligations to fence, and to report.

(*i*) See Coal Mines Act, 1911, s. 37, which provides for the fencing of pit mouths, &c., and s. 26, which provides for the fencing of an abandoned mine shaft. As to fencing off machinery, *ib.*, s. 55. Any change occurring in the mine, such as the opening of a new shaft or the abandonment of an old one, must be reported to the inspector of the division within two months: *ib.*, s. 19.

fault, or near any building without giving notice.

within the distance of —— yards from the —— Fault (except in levels and narrow workings for the purpose of ascertaining its true direction) and not to work the mines under and adjacent to any building now standing, or which may hereafter be erected on the mining area or any part thereof, without giving to the Lessor or his agent at least one month's previous notice in writing, in which case the following provisions shall apply—

(i) The Lessor or his agent may, at any time within one month after the receipt of such notice, mark out what coal (if any) shall be left as a support of such building, and the Tenants shall leave such coal accordingly;

(ii) If the Lessor or his agent shall omit to mark out what coal shall be left as aforesaid for one month after the receipt of such notice, the Tenants may (unless required to work the same by the Lessor) either leave so much coal as the Tenants shall consider will be sufficient to support the said building and protect the same from all damage and injury by reason of working the said mines, or may, at the discretion of the Tenants, work the whole of such coal;

(iii) If the Tenants shall neglect or omit to leave a sufficient support for such building, and any damage or injury shall be thereby occasioned thereto, then and in such case the Tenants shall (subject as hereinafter provided) pay to the Lessor or other the persons entitled to or interested in such building full and adequate compensation for the damage or injury done thereto as aforesaid, the amount thereof to be settled in case of dispute by arbitration, but the Lessor or other persons entitled or interested as aforesaid shall be entitled to compensation only in respect of any actual damage;(*j*)

Rule of law as to support of surface or of higher seams.

(*j*) The rule of law, that where the surface and the subjacent minerals belong to different persons the minerals must not be worked so as to let down the surface, applies as between a lessor and lessee, unless the terms of the lease show a contrary intention: *Davis* v. *Treharne* (1881), 6 A. C. 460; 50 L. J. Q. B. 665. In order to exclude the common law right of support the language used must unequivocally convey that intention, either by express words or by necessary implication; hence it is important to confine the lessor's remedy to compensation and to preclude him from obtaining an injunction: *Butterknowle, &c., Co.* v. *Bishop Auckland, &c., Co.* [1906], A. C. 305; 75 L. J. Ch. 541; *Butterley Co.* v. *New Hucknall, &c., Co.* [1910], A. C. 381, 79 L. J. Ch. 411; see also *Aspden* v. *Seddon* (1875), L. R. 10 Ch. 394; 44 L. J. Ch. 359. The mode of working in the district is material and the right to support may, it seems, be more easily rebutted against the lessee of a higher seam than against the owner of the surface: *Butterley's Case, supra.* A mere power of working does not necessarily imply a right to let down the surface: *Markham* v. *Paget* [1908], 1 Ch. 697; 77 L. J. Ch. 451. A covenant to pay

Provided that if the Tenants give notice to the Lessor of their intention to leave any coal for the support of any building, and the Lessor or his agent shall in writing require them to work such coal, then and in such case the Lessor shall be exclusively liable in respect of any damage which may result from the working thereof, and shall keep the Tenants effectually indemnified from all proceedings, claims and demands in respect of any such damage:

[Provided also that as regards the mines under the lands secondly hereinbefore described, the Lessor shall not be entitled to require the Tenants to work any part thereof which the Lessor may not have power to work.]

To account half-yearly with occupiers for damage done, &c.

(6) To account (except where the Lessor is made liable as aforesaid), on or before the —— day of —— in every year, during the continuance of this demise, and before the end of six months after the determination thereof, with the owners, lessees and occupiers of any part of the mining area, and also with all other persons (if any) who may be injured by the working and getting of the mines hereby demised, or in anywise relating thereto, and to pay to them full compensation for all damage or injury done or occasioned by reason of the exercise of any of the privileges hereby granted, and to indemnify and save harmless the Lessor therefrom, the amount of such compensation to be settled in case of difference by arbitration:

To make plans, &c., half-yearly.

(7) Within one month after each of the half-yearly days hereby fixed for payment of rent to make an exact map (*k*) and measurement in acres, roods, perches and yards of the gettings of the mines hereby demised during the preceding half-year, such

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compensation for damage by subsidence runs with the land: *Dyson* v. *Forster* [1909], A. C. 98; 78 L. J. K. B. 246; see also the cases cited on p. 995, *supra*. Additional rights of support may be obtained by application under the Mines (Working Facilities and Support) Act, 1923, Pt. I (as amended), similarly existing rights may be restricted. As to railways: *ib.*, Pt. II. In assessing damages for subsidence future possible damage must not be taken into account: *West Leigh, &c., Co.* v. *Tunnicliffe, &c., Ltd.* [1908], A. C. 27; 77 L. J. Ch. 102. The court will not grant an injunction against working in a method which may cause damage: *Locker-Lampson* v. *Staveley Coal, &c., Co.* [1909], 25 T. L. R. 136. In most districts it is the practice to authorise the lessee to let down the surface, keeping the lessor indemnified against damage to buildings. As to the statutory liability to support the roof and sides of the workings: Coal Mines Act, 1911, ss. 49, *et seq.*

Additional rights. **Damages.** **Support of workings.**

Plans.

(*k*) The Coal Mines Act, 1911, s. 20, provides that plans shall be kept showing the workings, faults, &c. When royalties are reserved by weight then this covenant must be varied (see next Precedent). As to abandoned mines, see *ib.*, ss. 21, *et seq.*

measurement to be taken as land measure of eight yards to the perch, and to include all pillars, walls and ranges which may be left as aforesaid, and to state the quantities and thickness of each seam separately (or as nearly as may be), such map to be on a scale of thirty yards to the inch: Provided that every such map and measurement shall be open at all times to the inspection of the Lessor or his agent, who may make copies thereof:

To restore lands to original state at end of lease, or pay for land which cannot be so restored.

(8) At or before the expiration of the said term to cause to be restored to their original or natural level, state and condition, and fit for agricultural occupation, all such parts of the lands as shall have been appropriated and used for any of the purposes of this demise: And if any land shall be permanently damaged or interfered with, so that the same cannot be restored as aforesaid, to pay to the Lessor at the end or sooner determination of the said term the sum of £—— for every statute acre of such land, and so in proportion for any less quantity than an acre:

To deliver up mines and works in good condition at end of term.

(9) At the expiration or sooner determination of the said term, to deliver up to the Lessor in good repair, order and working condition, all buildings and erections of brick, stone or slate standing and being on the lands belonging to the Lessor, and all pits, shafts, watergates, airgates and levels belonging to the said mines (except pits, shafts or other works which shall have been abandoned or disused in the ordinary and fair course of working of the said mines) and all such other works and things belonging to the said mines as are not in the nature of tenants' or trade fixtures removable by the Tenants, and also all such articles and things (if any) as the Lessor shall elect to purchase under the power hereinafter contained:

(10) Provided that—

Lessor to be at liberty to descend shafts to inspect mines.

(i) The Lessor and his agents, servants and workmen, shall be at liberty at all reasonable times during the said term to descend (*l*) any pits or shafts of the Tenants into the mines hereby demised for the purpose of examining the condition thereof, and of the works belonging thereto;

(ii) The Tenants, with proper persons employed by them and acquainted with the workings of the said mines, shall effectually assist the Lessor or other the persons aforesaid in descending

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Relief against forfeiture.

(*l*) The lessor has an implied right to go down all shafts comprised in the lease: *Lewis* v. *Marsh* (1849), 8 Hare, 97, 99. Relief against forfeiture for breach of this covenant cannot be obtained: L. P. Act, 1925, s. 146 (8) (ii).

into the said mines, and in returning to the surface, and shall allow him or them the use of all necessary and proper machinery and plant for that purpose:

Not to assign, &c., without licence of Lessor, but licence not to be unreasonably withheld.

(11) Not to assign, underlet or part with the possession of the mines and premises hereby demised, or any part thereof, to any persons, without the previous consent in writing of the Lessor, unless such consent shall be unreasonably withheld, and if any question shall arise as to whether the consent is or is not unreasonably withheld the same shall be settled by arbitration.

THE LESSOR'S COVENANT.

Lessor's covenant for quiet enjoyment by Lessees.

13. THE Lessor hereby covenants with the Tenants that they, paying the rents and royalties hereby reserved and observing and performing the covenants and provisions herein contained and on their part to be observed and performed, shall peaceably and quietly hold and enjoy the mines and premises hereby demised during the term hereby granted, without any lawful interruption from or by the Lessor (meaning him personally) or any person rightfully claiming from or under him.(*m*)

GENERAL PROVISIONS.

Power of distress.

14. IF the rents and royalties hereby reserved or any of them, or any part thereof respectively, shall be in arrear or unpaid for twenty-eight days next after any of the days whereon the same ought to be paid, then and so often as the case shall happen the Lessor may enter into and upon the mines and premises hereby demised, or any lands which shall for the time being be possessed or occupied by the Tenants for the purposes hereof [*or* any adjoining or neighbouring mines or works for the time being held by the Tenants and worked in connexion with the mines hereby demised],(*n*) and may distrain all or any of the coal, horses, engines, machinery, tools, implements, chattels,

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Quiet enjoyment.

(*m*) This covenant for quiet enjoyment does not extend to unforeseen causes, *e.g.*, the unexpected flooding of the mine: *Harrison* v. *Muncaster* [1891], 2 Q. B. 680; 61 L. J. Q. B. 102.

Distress.

(*n*) See *Re Roundwood Colliery Co.* [1897], 1 Ch. 373; 66 L. J. Ch. 186, applied in *Venner's Electrical Cooking and Heating Appliances* v. *Thorpe* [1915], 2 Ch. 404; 84 L. J. Ch. 925, a case on distress against a company in liquidation for rent payable in advance.

and effects which shall be found in or upon the premises so entered upon, and the same deal with and dispose of according to law in like manner as landlords may for rent in arrear, to the intent that thereby or otherwise all rent in arrear, and all costs and expenses occasioned by the non-payment thereof, shall be fully paid and satisfied.

Power of re-entry.

15. If the rents and royalties hereby reserved or any of them, or any part thereof respectively, shall be in arrear or unpaid for thirty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall have been legally demanded or not), or if the Tenants shall commit any breach of the covenants and conditions contained in this Lease (*o*) and on their part to be observed and performed or any of them, or if any order shall be made or resolution passed for winding up the Tenants (being a company) otherwise than for purposes of reconstruction, or if the Tenants or any of them (being an individual) shall be adjudged a bankrupt or make a composition with his creditors, then and in any such case the Lessor may at any time thereafter, and although the Lessor may not have taken advantage of some previous default of a like nature, into and upon the mines and premises hereby demised, or any part thereof in the name of the whole, re-enter, and the same have again, re-possess, and enjoy, as of his former estate.

Power for Lessees to determine Lease if mines become flooded.

16. If at any time during the continuance of this demise the mines hereby demised shall become unworkable by reason of any large outbreak of water (not caused by improper working or by any default of the Tenants), then and in such case the Tenants may determine the Lease on the —— day of —— in any year of the term hereby granted by giving to the Lessor at least twelve months' notice in writing to that effect, but without prejudice to the rights and remedies of the Lessor under this Lease, for the recovery of any rent or royalties which may then remain unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the part of the Tenants.(*p*)

Proviso for re-entry.

(*o*) Apart from express stipulation the proviso for re-entry will be confined to the case of non-payment of rent: *Hodgkinson* v. *Crowe* (1875), L. R. 10 Ch. 622; 44 L. J. Ch. 680. If the lease is granted under the S. L. Act, 1925, the power of re-entry must be exercisable after not more than thirty days' default: *ib.*, s. 42 (1) (iii).

(*p*) These are not "usual" clauses apart from express arrangement: *Strelley* v. *Pearson* (1880), 15 Ch. D. 113; 49 L. J. Ch. 406.

17. (1) If all the coal and cannel hereby demised and capable of being worked [at a profit] shall be wholly exhausted before the expiration of the term hereby granted, then this Lease shall thereupon cease and determine as if the same had expired by effluxion of time, but without prejudice to the rights and remedies of the Lessor for the recovery of any rent then remaining unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the part of the Tenants.(*p*)

Lease to determine if mines are worked out.

[(2) If any difference arises as to whether any coal or cannel is capable of being worked at a profit the matter shall be submitted to arbitration.]

18. If at the determination (*q*) of this Lease the Lessor shall be desirous of purchasing all or any of the moveable machinery, plant, and things in, upon or under the mining area, or any part thereof, and used or employed in connexion with the mines hereby demised (including all things in the nature of fixtures removeable by the Tenants during the continuance of this Lease), and shall give notice of such desire in writing to the Tenants at least six months before the expiration or sooner determination of the said term (unless the said term shall be determined under the power of re-entry hereinbefore contained, in which case the notice may be given at any time within six months after such determination of the said term), then and in such case the things mentioned in such notice shall be left by the Tenants and be taken by the Lessor at a valuation to be made thereof, in case of any difference between the parties as to their value, in the manner hereinafter provided, and the amount of such valuation, when ascertained or settled, shall be paid to the Tenants within three months next after such valuation shall have been agreed upon or fixed, together with interest thereon at the rate of £— per cent. per annum from the time when the amount is ascertained.

Power for Lessor to purchase plant, &c., at end of term.

19. If any difference shall arise between the Lessor and the Tenants concerning the value of the articles and things which the Lessor shall elect to take or retain as aforesaid, or the amount to be paid by the Lessor in respect thereof, or concerning any other matter or thing which it is hereby provided shall be

Arbitration clause.

(*q*) A covenant to exercise this option before the determination of the term is invalid: *Talbot* v. *Ford* (1842), 13 Sim. 173; and *cf. Rolleston* v. *New* (1858), 4 K. & J. at pp. 646–7.

Covenant to exercise option.

settled by arbitration, or touching any clause, matter, or thing whatsoever herein contained, or the operation or construction thereof, or any matter or thing in any way connected with this Lease, or the rights, duties, or liabilities of either party under or in connexion with this Lease, then and in every such case the matter in question shall be referred to an agreed single arbitrator [or in default of agreement to two arbitrators, one to be appointed by each party in difference] in accordance with and subject to the provisions of the Arbitration Act, 1889.(*r*)

Notices.

20. EVERY notice hereby required or authorised to be given to the Lessor may be either given to him personally or left at his usual or last known place of abode in England or Wales, or may be given to such agent or other person or in such manner as the Lessor may from time to time direct; and every notice hereby required or authorised to be given to the Tenants may be given to them or either of them personally, or left at their office or counting-house for carrying on the business under this Lease, and section one hundred and ninety-six of the Law of Property Act, 1925, applies to all notices to be served hereunder.

Marginal notes.

21. THE marginal notes and headings to this Lease do not affect the construction thereof.

IN WITNESS, &c. (*Add Schedule.*)

When there is an arbitration clause, and an action is brought in respect of matter agreed to be referred court may stay proceedings.

(*r*) An arbitration clause does not altogether oust the jurisdiction of the court: *Cooke* v. *C.* (1867), L. R. 4 Eq. 77; 36 L. J. Ch. 480; *Witt* v. *Corcoran* (1871), L. R. 8 Ch. 476, n.; *Kitts* v. *Moore* [1895], 1 Q. B. 253; 64 L. J. Q. B. 152; but under the Arb. Act, 1889, s. 4, if any party commences legal proceedings in respect of any matter agreed to be referred, the court may stay the action, upon being satisfied that no sufficient reason exists why the matter cannot and ought not to be referred to arbitration. This power will in general be acted on: *Willesford* v. *Watson* (1873), L. R. 8 Ch. 473; 42 L. J. Ch. 447; *Russell* v. *R.* (1880), 14 Ch. D. 471; 49 L. J. Ch. 268; *Pini* v. *Roncoroni* [1892], 1 Ch. 633; 61 L. J. Ch. 218; *Manchester Ship Canal Co.* v. *Pearson* [1900], 2 Q. B. 606; 69 L. J. Q. B. 852; and see *Ochs* v. *Ochs Bros.* [1909], 2 Ch. 121; 78 L. J. Ch. 555. A claim for rectification is not covered by an arbitration clause: *Printing Machinery Co.* v. *Linotype, &c., Ltd.* [1912], 1 Ch. 566; 81 L. J. Ch. 422.

Rectification.

Submission irrevocable.

A submission to arbitration is irrevocable except by leave of the court, unless a contrary intention is expressed: Arb. Act, 1889, s. 1. When once the award is made the court cannot set it aside: *Darlington, &c., Co.* v. *Harding* [1891], 1 Q. B. 245; 60 L. J. Q. B. 110.

Powers of fiduciary owners in regard to arbitration.

As to the powers of fiduciary owners in regard to arbitration: S. L. Act, 1925, s. 58; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39; T. Act, 1925, s. 15 (f).

No. II.

LEASE *of* COAL, IRONSTONE, FIRECLAY *and other Minerals.* RESERVATION *of* ROYALTIES *by* WEIGHT (Northumberland and Durham Form).(*s*) (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN (*parties and definitions as in last Precedent, p.* 1115), Parties.

WITNESSETH, in consideration of the rents and royalties hereinafter reserved and the covenants by the Tenants herein contained, and it is hereby declared as follows:—

1. THE Lessor hereby demises unto the Tenants: Demise.

ALL THOSE mines,(*t*) beds, veins, and seams of coal, ironstone and fireclay [common clay, common brick clay, common brick earth, sand, chalk, limestone and gravel (*u*)], as well opened as Parcels, including all seams of coal.

(*s*) This Precedent is also applicable to other districts where the practice of working is similar. See notes to last Precedent.

Registered title to minerals. *Primâ facie*, the registered proprietor of land is the person to grant a lease of minerals thereunder: L. R. Act, 1925, ss. 3 (viii), 18 (1) (e), 21 (1) (d), 39, 69; but in respect of land, the title to which is registered before 1926, minerals and mineral rights being rights which, where the title was first registered before 1st January, 1898, were created *before* that date, and where the title was first registered *after* 1897, were created *before* the date of first registration, will be treated as overriding interests and be excepted from the title unless they were in fact the property of the proprietor: *ib.*, s. 70 (1) (l). If an adverse claim is admitted this will be noted against the title: *ib.*, s. 70 (3). No guarantee is given that the mines are included in the registered title unless they are noted as being included: *ib.*, s. 83 (5) (b). The compulsory provisions do not apply to minerals the title to which has been severed from the title to the surface: *ib.*, s. 120 (1); this does not mean that, where the title has been registered, any mining lease granted after the date of first registration need not be registered. Application can be made to register the title to severed minerals: L. R. R., 1925, rr. 50 and 53. As to identification when a mining lease is granted: *ib.*, r. 113. As to registration of the title to minerals or notification of exception: *ib.*, rr. 195, 196. May be "overriding interests." No guarantee. Compulsory provisions. Leases of; identification of parcels.

(*t*) As to the meaning of mines, veins, seams: MacSwinney, 5th ed., 1. As to what are minerals: *ib.*, 7, *et seq.* Generally, sand is not a mineral: *Staples* v. *Young* [1908], 1 Ir. R. 135; but it is a mineral within the meaning of the Quarries Act, 1894: *Scott* v. *Mid. Ry. Co.* [1901], 1 K. B. 317; 70 L. J. K. B. 228. Surface clay and sandstone are usually not included in the term: *Skey* v. *Parsons* (1909), 101 L. T. 103. China clay is a mineral within the meaning of the Rlys. Cl. Act, 1845: *G. W. Ry. Co.* v. *Carpalla, &c., Co.* [1910], A. C. 83; 79 L. J. Ch. 117; but sandstone is not: *N. British Ry. Co.* v. *Budhill &c., Co.* [1910], A. C. 116; 79 L. J. P. C. 31. See also *A.-G.* v. *Salt Union* [1917], 2 K. B. 488; 86 L. J. K. B. 1026. Meaning of minerals.

For variations where the lessor is not the owner in fee simple, see Forms, Sect. I, *supra*, pp. 1014 *et seq.*, and notes thereto, and as to registered land: *ib.*

(*u*) See Fin. (1909–10) Act, 1910, ss. 20 (5), 22 (8).

unopened (*v*) lying, or being in or under the lands (hereinafter called the mining area) situated in the Parish of ——, in the County of ——, containing —— acres or thereabouts, and more particularly described in the Schedule hereto and delineated on the plan hereto (*w*) and thereon edged red,

TOGETHER with the easements, &c. (*as in last Precedent, clause* 1, *p.* 1117, *to the end*).

LESSEES' RIGHTS AND PRIVILEGES.

Liberty to work mines demised, and also by way of outstroke adjoining mines.

2. THE Tenants may at all times during the said term work the mines hereby demised, and also work from or through the said mines by outstroke or instroke (*x*) any other mines of coal, ironstone, fireclay or other minerals for the time being belonging to or held by the Tenants, and also carry over the surface of the mining area the produce of the mines hereby demised and of such other mines and minerals as aforesaid, and may exercise and enjoy, in and upon and under the mining area, all easements, rights and privileges necessary or convenient for the purposes aforesaid, and in particular may do all or any of the following things (that is to say):—

To sink pits, provide welfare accommodation, &c.

(1) Sink, drive, make, erect, set up and construct in, upon, over or under the mining area, pits, shafts, outstrokes, instrokes, drifts, levels, watercourses, aircourses, engines, machinery, houses for the residence of workmen and others employed in the said mines, baths, drying and changing rooms, shops, clubhouses, medical, surgical and welfare accommodation (including gardens and recreation grounds) for workmen, their familes and dependents, sheds,

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Spoil mounds.

(*v*) Mounds of tap-cinder, produced by lessees in working ironstone mines and left as refuse heaps, belong to the lessor as part of the soil, and may not be removed by subsequent lessees in the absence of express stipulation in the lease: *Boileau* v. *Heath* [1898], 2 Ch. 301; 67 L. J. Ch. 529.

Plan how construed.

(*w*) Where there is discrepancy between the plan and the description, the description in the lease prevails: *Taylor* v. *Parry* (1840), 1 Man. & G. 604; 9 L. J. C. P. 298; but as to registered land, see L. R. Act, 1925, s. 76.

Instroke and outstroke.

(*x*) The right of "instroke" is the right of conveying minerals from a demised mine to the surface through an adjacent mine. The right of "outstroke" is the right of conveying minerals from an adjoining mine to the surface through the demised mine: MacSwinney, 5th ed., 131. A lessee has *primâ facie* the right to work by instroke: *Whalley* v. *Ramage* (1862), 10 W. R. 315; *Lewis* v. *Fothergill* (1869), L. R. 5 Ch. 103; *Jegon* v. *Vivian* (1871), L. R. 6 Ch. 742; 40 L. J. Ch. 389.

Instroke, implied right.

furnaces, kilns, ovens, railroads, tramroads and other roads, erections and other works, and use all works of the above description now existing in connexion with the said mines :

(2) Appropriate the water upon or within the mining area, and collect the same in ponds and reservoirs, or otherwise, but so that the Tenants shall not, in exercising this privilege, foul, impregnate or otherwise deteriorate the surface springs or streams of water within the mining area so as to pollute or render them useless or unprofitable :

To appropriate water.

(3) Use and appropriate a sufficient part of the mining area for depositing and heaping thereon the coal, ironstone, fireclay and other minerals to be raised and gotten from the mines hereby demised, and such other adjoining mines as aforesaid, and all the earth, soil and other substances brought to the surface in or about the working of the same :

To use land for depositing minerals and spoil.

(4) Convert coal into coke and patent fuel, calcine ironstone and manufacture fireclay into bricks and other articles, whether for colliery purposes or for sale, or otherwise :

To make coke, calcine iron-stone and make bricks.

(5) Dig, work and get common clay, sand, stone and other minerals hereby demised from the mining area, and manufacture the common clay into bricks and tiles [for the purposes of the colliery erections and works hereby authorised, but not for sale or any other purpose *or* whether for colliery purposes or for sale or otherwise] :

To dig common clay, &c.

(6) (*Power to let down surface as Clause* 2 (6) *of last Precedent, p.* 1119, *referring to* "the mining area.")

3. PROVIDED that so much of every bed, vein and seam of coal, ironstone, fireclay and other minerals hereby demised shall remain unworked as will leave within the limits of this demise a barrier (*y*) of —— yards in breadth or thickness separating the mines hereby demised from the adjoining mines, and all outstroke and instroke drifts made through the said barrier for the purpose of working adjoining mines as aforesaid shall be of such size and in such situations as shall have been previously approved of by the Lessor or his agent, and all such drifts shall be so made as to be capable of being easily and effectively closed by frame-dams when the use thereof has ceased.

Boundary barrier to be left.

Drifts, how to be made.

(*y*) This covenant will, if necessary, be enforced by mandatory injunction : *Mexborough* v. *Bower* (1843), 7 Beav. 127. A lessee, apart from this covenant, is guilty of waste : *Marker* v. *Kenrick* (1853), 13 C. B. 188 ; 22 L. J. C. P. 129.

Barrier covenant.

Surface operations, where to be carried on.

4. PROVIDED ALSO, that all surface operations shall be carried on upon such part only of the mining area as shall be selected for that purpose in manner following (that is to say) :—

(1) Whenever the Tenants shall require to occupy or use any land for surface operations, they shall give a notice in writing to the Lessor or his agent specifying the site proposed for such operations :

(2) If the Lessor or his agent objects to the site so proposed, he shall, within fourteen days after receiving such notice, himself select a site and notify the same in writing to the Tenants, who shall be at liberty at any time within fourteen days after the selection of such site shall have been made and notified to them as aforesaid, but not afterwards, to object to the same as being unsuitable or inconvenient for the purpose for which the same is required, and to notify such objection in writing to the Lessor or his agent :

(3) In case of such objection being made and notified as aforesaid, the question whether the site is suitable and convenient or not shall be referred to arbitration under the provisions hereof.

Plan and sanitary arrangements of cottages to be approved by Lessor.

5. (1) No houses for residence shall be erected by the Tenants under the said power for that purpose until the plan, accommodation and sanitary arrangements of such houses shall have been submitted to the Lessor and approved of by him :

(2) In case a difference of opinion on any of such points shall arise between the Lessor and the Tenants the same shall be referred to arbitration :

User of houses.

(3) No dwelling-houses shall be used except for the purpose of residence of agents, miners and workmen employed in or about the said mines and works, or for medical, surgical or welfare work, and in particular no trade of any sort shall be carried on in any such houses or any of them, save in the case of shops provided (whether in connexion with any club-house or otherwise) for the use of workmen, their families and dependents.

6. (*Tenants to be at liberty to remove machinery, &c., at end of term, as in clause* 6 *of last Precedent, p.* 1120.)

RIGHTS RESERVED TO LESSOR.

Reservations to Lessor.

7. (1) THE Lessor shall be at liberty by himself, his tenants, agents and servants, to use any railroads or other roads made and used by the Tenants over the mining area under the authority of this Lease without paying any rent for the same, and also

to make, construct and use, and to grant and demise to other persons the right to make, construct and use over the mining area any railroads or other roads crossing or intersecting the railroads or other roads of the Tenants:

Liberty for Lessor to use railroads, &c., of Lessees.

[(2) The Lessor and the persons authorised by him shall be entitled (in common with the Tenants) to work, open and carry away or manufacture into bricks, tiles or lime on the mining area any common clay, brick clay, brick earth, sand, chalk, limestone and gravel.]

(3) Provided that—

(i) In the exercise of the rights, liberties and privileges hereby reserved to the Lessor as little hindrance, obstruction and damage as possible shall be done to the Tenants, or to the exercise by them of the rights and privileges hereby granted to them;

(ii) Fair and proper compensation shall be paid by the Lessor, or other the persons exercising the said reserved rights and privileges, to the Tenants for all loss, damage or injury which they may sustain or incur by reason of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.

Compensation.

RENTS RESERVED BY THIS LEASE.

Rents. Certain rent.

8. (1) THE Tenants shall pay [to the Lessor] for the mines hereby demised [(save as hereinafter mentioned)] the certain yearly rent next hereinafter mentioned (that is to say), the yearly rent of £—— for the first and second years of the term hereby granted, the yearly rent of £—— for the third and fourth years of the said term, and the yearly rent of £—— for the remainder of the said term:

The certain yearly rent payable for the time being as aforesaid to be paid by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year.

(2) The Tenants may work and get in every year from and out of the said mines and premises in respect of the said certain rent such a quantity of coal as at the rates hereinafter mentioned would produce for that year a rent equal in amount to the said certain rent:

Provided that the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

[(3) The Tenants shall also pay [to the Lessor] for the common clay, brick clay, brick earth, sand, chalk, limestone and gravel

[Separate rent for clay, &c.]

hereby demised the certain yearly rent of £—— for every year of the said term, to be paid by equal half-yearly payments on the half-yearly days aforesaid, whether any such minerals or substances shall in fact be gotten or not.]

Royalty for screened coal and small coal.

9. THE Tenants shall pay [to the Lessor] a royalty of —— for every ton of screened coals, and —— for every ton of small coals (and so in proportion for any less quantity), which shall be raised or gotten from or out of the said mines in any year of the said term over and above the quantity which the Tenants are hereinbefore authorised to work and get in respect of the said certain rent:

Provided that—

Power for Lessees to make up short workings of coal.

(i) If in any year the Tenants shall not raise and get from or out of the said mines such a quantity of coal as at the above-mentioned rates would produce for that year the amount of the certain rent hereby reserved, then and in every such case the Tenants may in any subsequent years of the said term [*or* during the next —— years of the said term, but not afterwards] raise and get from or out of the said mines such a quantity of coal as shall be required to make up the deficiency without paying any rent for the same other than the said certain rent;

(ii) The overworkings of any preceding years shall not come in aid of or be applied to make good the deficiency or short workings in any subsequent years.

Royalties for ironstone and fireclay, &c.

10. (1) THE Tenants shall pay [to the Lessor] a royalty of —— for every ton of ironstone, and a royalty of —— for every ton of fireclay which shall be raised from the said mines:

[(2) The Tenants shall also pay [to the Lessor] a royalty of —— for every ton of common clay, brick clay, brick earth, sand, chalk, limestone, and gravel which may be gotten out of the premises and used or disposed of by them for any purposes (other than colliery purposes), and in any year the certain rent fixed for such substances may be set off against any royalty payable therefor but in that year only.]

Outstroke rent.

11. THE Tenants shall pay [to the Lessor] an outstroke rent of —— for every ton of coal, ironstone, fireclay, or other minerals, the produce of any mines not hereby demised, which shall be brought to the surface through or by means of the mines hereby demised, and the pits or shafts thereof under the powers hereof.(*z*)

(*z*) The following clause, reserving a greater variety of rents, is taken

Wayleave rent.

12. THE Tenants shall pay [to the Lessor] a wayleave rent of —— for every ton of coal, ironstone, fireclay or other minerals, the produce of any mines not hereby demised, which shall be led or carried over the surface of the mining area or any part thereof under the powers hereof, not being coal, ironstone or fireclay, subject to the payment of outstroke rent under the last preceding clause.(*a*)

How royalties

13. (1) THE royalties above reserved (other than the said

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from a Northumberland mining lease, and may be used when applicable, instead of the reservation of outstroke and wayleave rent in the text :—

11. THE Tenants shall also pay [to the Lessor] the following rents (namely) :—

Watercourse or aircourse rent.(*b*)

(1) A watercourse or aircourse rent of —— for every ton of coal, ironstone or fireclay, the produce of any mine other than the mines hereby demised, which shall be drained, ventilated or made workable by means or with the aid of any outstroke from the mines hereby demised, whether or not the same coal, ironstone or fireclay shall be carried through such outstroke into the mines hereby demised :

Outstroke rent.(*c*)

(2) An outstroke rent of —— for every ton of coal, ironstone or fireclay, the produce of any mines not hereby demised, which shall be brought or carried through any such outstroke as aforesaid into the mines hereby demised, whether or not such coal, ironstone or fireclay shall be brought to the surface through or by means of any pit or shaft made or used by the Tenants under the powers hereof :

Shaft rent.

(3) A shaft rent of —— for every ton of coal, ironstone or fireclay, the produce of any mines not hereby demised, which shall be brought to the surface through or by means of any pit or shaft made or used by the Tenants under the powers hereof : and

Wayleave rent.

(4) A wayleave rent of —— for every ton of coal, ironstone or fireclay, the produce of any mines not hereby demised, which shall be led or carried over the surface of the mining area or any part thereof, or having been brought into that area by means of any works belonging to or held by the Tenants under the powers hereof.

Wayleave.

(*a*) See MacSwinney, 5th ed., 295, as to what minerals are subject to the rent. Generally, only minerals actually brought through and not temporarily deposited are included.

(*b*) See MacSwinney, 5th ed., 312 (air course, &c.).

(*c*) See MacSwinney, 5th ed., 132 (outstroke).

to be calculated.

certain rents) shall be paid respectively on the —— day of —— and the —— day of —— in every year in respect of the coal, ironstone, fireclay and other substances raised or gotten (*d*) [or used and disposed of as aforesaid] during the then preceding half-year, and in respect of which the same shall be payable :

(2) The said rents shall be calculated upon the weights or quantities of coal, ironstone, fireclay and other substances respectively, as the same shall be first worked and gotten, and before screening, washing or cleansing, and a ton shall be reckoned at 2,240 lbs.

Lessees may retain a limited quantity of coal for domestic and other purposes rent free.

14. (1) The Tenants may in each year have and retain for the usual and customary purposes of the colliery, and for domestic consumption in the houses or offices, club-houses and other buildings, of the Tenants or their agents and workmen for the time being employed in and about the said mines and premises, but not for sale or for any other purpose, any quantity not exceeding —— part of the whole weights and quantities of coal which shall be gotten and raised during such year from the mines hereby demised, without paying any royalty therefor :

Fireclay used in building for colliery purposes to be rent free.

(2) All fireclay and other substances raised from the premises and used by the Tenants in or about the erection, alteration or maintenance of buildings for colliery purposes, or any other works hereby authorised shall be free from royalty.

Surface rent.(*e*)

15. (1) The Tenants shall also pay [to the Lessor] in respect of every acre of land the surface whereof shall be occupied or used by the Tenants for any of the purposes hereof, a yearly rent, double in amount of the value per acre of the same lands for agricultural purposes at the time when such occupation or use shall commence, and so in proportion for any less quantity than an acre :

(2) The said surface rent to be paid half-yearly on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on such of the said half-yearly days as shall happen next after such occupation or use shall have commenced, and the last of such payments to be made on the half-yearly day of payment which shall happen next after such occupation or use shall have ceased, and the land shall have been

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(*d*) If the clause in the last note is used, add here "or drained, ventilated or make workable."

Mineral rights duty not claimed on surface rents.

(*e*) The I. R. Commrs. do not claim mineral rights duty in respect of surface rents where land is let to mining lessees : 56 Sol. J. 312.

restored and rendered fit for cultivation again, or shall have been paid for at the fee simple value as hereinafter provided :

(3) If any difference of opinion arises as to what ought to be considered the occupation or use of the surface of any land for the purposes aforesaid, or as to the day on which such occupation or use shall have commenced, or as to whether or not such land has been restored and rendered fit for cultivation, or as to the amount of rent payable under this reservation, the matter in difference shall be settled by arbitration.

THE LESSEES' COVENANTS.

Lessees covenants.

16. THE Tenants hereby [jointly and severally] covenant with the Lessor in manner following, namely :—

(1) (*To pay rents and observe provisions, as in clause* 12 (1) *of last Precedent, p.* 1124) :

(2) (*Covenant to pay rates and taxes, as in clause* 12 (2) *of same Precedent*) :

To keep books of account, &c. (*f*)

(3) (i) At all times during the said term to keep or cause to be kept at the office or counting-house of the colliery, to be situated in or contiguous to some part of the mining area, correct and intelligible books of account upon such plan or principle as is generally adopted in such cases, which books shall contain accurate entries of the quantity of coal and other minerals wrought and brought to bank or otherwise gotten from the mines and premises hereby demised, and from any adjoining or other mines worked through the mines hereby demised as aforesaid,(*g*) with all particulars of dates and other facts necessary or proper for conveniently ascertaining the amounts of the several royalties from time to time payable under this lease ;

(ii) At their own expense to furnish to the Lessor or his agent true and correct copies of such accounts, and of all bills of presentment whenever thereunto required, and if required to verify such copies by the statutory declaration of their agent :

To keep plans of working.

(4) (i) At all times during the said term to cause to be made and kept at the said office or counting-house correct and intelligible plans and sections of all the mines hereby demised, and of any mines worked through the mines hereby demised, which

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Relief against forfeiture.

(*f*) No relief against forfeiture can be granted if the lessor is not allowed access to books, &c. : L. P. Act, 1925, s. 146 (8) (ii).

(*g*) If the clause in the note to clause 11, p. 1139, of this Precedent, is used, add here, "or drained, ventilated or made workable as aforesaid."

plans and sections shall show as well the operations and workings which have been carried on as also all dykes, troubles, veins, faults and other disturbances which have been observed and encountered in such workings and operations;

(ii) All such plans and sections shall be made, amended and filled up from actual surveys to be made for that purpose at the end of every period of three months;

(iii) When required, at their own cost and charges, to furnish to the Lessor or his agent true and correct copies of such plans and sections: (*h*)

Lessor to have access to books of account and plans.

(5) Provided that the Lessor and his agents and servants at all reasonable times during the said term may enter into and have free access to the said office or counting-house for the purpose of examining and inspecting the said several books of account, plans, and sections, and also all railway accounts and vouchers for carriage, and take copies thereof and make extracts therefrom respectively:

Lessees to keep weighing machine at the mouth of each pit.

(6) To provide and at all times during the said term to keep at or near the pit or each of the pits at which the produce of the mines and premises hereby demised shall be brought to bank a good and properly-constructed weighing machine, and to weigh or cause to be weighed therein all coal and other minerals brought to bank or otherwise gotten from or out of the mines and premises hereby demised, or from or out of any adjoining or other mines worked through the mines hereby demised under the powers hereby conferred, and to cause the weights (ascertained as aforesaid) to be forthwith duly registered at the machine houses, and at the end of each day to cause the total weights and quantities of coal and other minerals gotten during the day and weighed as aforesaid to be entered in the aforesaid books of account:

Lessor may appoint persons to be present at weighing.

Provided that the Lessor may at all times during the said term employ any persons to be present at the raising and weighing of the coal and other minerals, and to keep accounts thereof, and to check the accounts kept by the Tenants:

The Lessor may test weighing machines.

(7) (i) That the Lessor and his agents and servants may, at any times during the said term, examine and test each weighing machine to be provided and kept by the Tenants as aforesaid, and the weights used therewith, in order to ascertain whether the same respectively are correct and in good repair and order;

Plans.

(*h*) As to statutory liability to keep plans: Coal Mines Act, 1911, ss. 20, 21.

(ii) If upon any such examination or testing any such weighing machine or weights shall be found incorrect or out of repair or order, the Lessor or his agent may require that the same be adjusted, repaired and put in order by and at the expense of the Tenants, and may hinder the use thereof in the meantime ;

(iii) If such requisition be not complied with within fourteen days after the same shall have been made, the Lessor or his agent may cause the said weighing machine and weights respectively to be adjusted, repaired and put in order, and may recover the expense of so doing from the Tenants ;

(iv) If upon any such examination or testing as aforesaid any error shall be discovered in any weighing machine or weights to the prejudice of the Lessor, such error shall be considered to have existed for three months previous to the discovery thereof (or from the last occasion of so examining and testing the same weighing machine or weights in case such occasion shall be within such period of three months) and the several royalties hereinbefore reserved shall be paid or accounted for accordingly :

To work mines properly.

(8) At all times during the said term to win and work the said mines and premises hereby demised in a proper, fair and regular manner (unless prevented by strikes, lock-outs, damage by fire or water or other unavoidable cause), and according to the most approved practice of winning and working mines of the like nature respectively in the district [Counties of Durham and Northumberland], and in accordance with the statutory obligations for the time being in force and with as little damage as possible to the surface and to the buildings, fences, crops and other property thereon :

To pay compensation for damage to surface.

(9) Within one month after the end of every year of the said term to pay to the Lessor full compensation for all injury or damage done to the surface or the buildings, fences, crops or other property thereon during the preceding year in or about the carrying on of the works hereby authorised, the amount of such compensation to be settled in case of difference by arbitration :

To leave barrier and stop and secure drift when no longer required.

(10) (i) Not to work or carry away any part of the barrier hereinbefore directed to be left, except for the purpose of making drifts by way of outstroke or instroke as hereinbefore authorised ;

(ii) Upon the expiration or sooner determination of the said term, or so soon as any such drift shall cease to be used (which shall first happen) to provide sufficient frame-dams for stopping and securing the said drifts and passages, and by such frame-dams to stop and secure the same accordingly, unless the Lessor or his agent shall by notice in writing request them not to stop the same, in which case that request shall be complied with :

To fence off pits, &c.

(11) (i) To well and effectually fence off from the adjoining lands all the pits, shafts and other works made or used under the powers hereof ;

(ii) To provide and maintain in good repair and condition proper roads, gates, stiles and fences for the convenient occupation of the surface of the mining area ;

(iii) To provide and maintain proper and sufficient drains, culverts, arches and passages for carrying off any water which shall arise or be produced or interrupted by any of the works hereby authorised, so that the drainage of the mining area be not prevented or prejudiced :

Furnaces and coke ovens to be constructed on most approved principles.

(12) (i) To construct all furnaces, coke ovens or brickworks to be erected on any part of the mining area under the provisions hereof on the most approved principle in use at the respective times when the same shall be erected :

To consume smoke.

(ii) To use their best endeavours to effect to the greatest possible extent the consumption on the premises by the most approved method for the time being adopted or known of all smoke or vapour made or arising from the furnaces, coke ovens, brickworks, engines or other works of the Tenants, so that as little smoke or vapour as may be shall issue from the chimneys or other outlets used by the Tenants for the conveyance or passage of smoke or vapour:

To purify water discharged from works.

(13) (i) In the discharge from the works of water which shall have been used for washing coal, or which has run through or passed near to burning refuse or cinder ovens, or other works, to use the most approved methods by deposit or catch pits, or otherwise, to render such water as little noxious as possible before allowing the same to mix with any of the natural rivulets or brooks running through the mining area ;

(ii) If any difference of opinion arises as to the size, the number or the mode of application of such deposit or catch pits, or other means or otherwise relating thereto, the matter in difference shall be settled by arbitration :

To provide wells and watering places for occupiers of surface.

(14) From time to time during the said term to make and maintain in good order and repair sufficient wells or watering places in all cases where by reason of the exercise of the liberties hereby granted, or any of them, the occupier of any of the mining

area, or any adjoining or neighbouring lands, shall be deprived of his wells or watering places, and to make and maintain in good order and repair all necessary watercourses and drains for carrying waters to the wells and watering places to be made and maintained as aforesaid :

Lessor to be at liberty to remove manure and ashes.

(15) That the Lessor or his tenants (as he shall direct) may have and take for his or their own use, free of expense, the whole of the manure and ashes made and produced on or about the pits, shafts, roads or ways of the Tenants, or otherwise in working and carrying on the mines and premises hereby demised during the said term, with all proper facilities for removing and taking away such manure and ashes :

Not to use railways, &c., for purposes not expressly authorised.

(16) Not to use or permit to be used any of the railways, waggonways or other roads or ways, or any pits, shafts, outstroke or instroke, drifts, watercourses, aircourses, buildings, erections, machinery or other works or conveniences, which shall be made or used by the Tenants under the powers hereof in, over or upon or under the mining area for any purpose whatsoever other than the working of the mines hereby demised, and such other mines as aforesaid, and such other purposes as are herein specially mentioned :

(17) (*Lessor to be at liberty to descend shafts, and to inspect mines, as in clause* 12 (10) *of last Precedent, p.* 1128 :)

To deliver up mines, &c., in good working order at end of term.(*i*)

(18) (i) At the end or sooner determination of the said term to deliver up to the Lessor in good order, repair and condition, and fit for the future working of the mines and premises hereby demised, all engines, houses and buildings of stone or brick, pits, shafts, watercourses, air-gates and levels in the said mines and premises (except any pits, shafts or other works which shall have been abandoned or disused in the ordinary and fair course of working of the premises), and all the moveable machinery, works, articles and things which shall be in, upon or under the mining area which the Lessor shall elect to purchase under the power hereinafter conferred ;

(ii) At the end of the said term to bank up all coals at the pit, not exceeding three months' vend, in such manner as to be no hindrance to an incoming tenant :

(*i*) This covenant prevents the lessee from selling fixtures during the term ; if he does so it enables the lessor to confirm the sale and recover the proceeds immediately without waiting for the end of the term : *Re British Red Ash Coll. Co.* [1920], 1 Ch. 326 ; 88 L. J. Ch. 212.

At end of term to restore lands or pay fee simple value.

(19) At or before the expiration or sooner determination of the said term to cause to be restored to their original or natural condition all such parts of the mining area as shall have been appropriated or used for any of the purposes of this demise, or (at the option of the Lessor) to pay to the Lessor the value of the fee simple of the same, such value to be estimated at —— years' purchase of the rack rent or value per acre of the same land for agricultural purposes at the time when the occupation or use thereof for the purposes of this demise shall have commenced :

(20) (*Covenant not to assign, &c., without licence, as in clause* 12 (11) *of last Precedent, p.* 1129.)

THE LESSOR'S COVENANT.

Lessor's covenant for quiet enjoyment.

17. (*Covenant for quiet enjoyment by Lessor, as in clause* 13 *of last Precedent, p.* 1129.)

GENERAL PROVISIONS.

18 and 19. (*Powers of distress and re-entry, as in clauses* 14 *and* 15 *of last Precedent, pp.* 1129–30.)

Lessees may abandon mine on giving twelve months' notice.

20. IF the Tenants shall be desirous at the end of any year of the term hereby granted to abandon and yield up the mines and premises hereby demised, and of such desire shall give notice in writing to the Lessor twelve months at least before the period of such proposed abandonment, then this Lease shall at the expiration of such last-mentioned period, cease and determine, but without prejudice to the rights and remedies of the Lessor for any rent in arrear or for any previous breach of the Tenants' covenants herein contained.

Lessor may purchase machinery, &c., at end of term.

21. IF at the determination of this Lease the Lessor shall be desirous of purchasing all or any of the moveable machinery, articles and things in, upon or under the mining area, or any part thereof, and used or employed in, about, carrying on and working the mines hereby demised, or for the more convenient occupancy thereof, and shall, &c. (*power to Lessor to purchase plant, as in clause* 18 *of last Precedent, p.* 1131).

22, 23 and 24. (*Arbitration clause, clause as to notices, and marginal notes as in clauses* 19, 20 *and* 21 *of last Precedent, pp.* 1131–32.)

IN WITNESS, &c. (*Add Schedule.*)

No. III.

LEASE *of* MINES *by* STATUTORY OWNERS *where there is no Tenant for Life.*(*j*) (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN A. B., of, &c., and C. D., of, &c. (*the Statutory Owners in whom the mines are shown to be vested by a vesting instrument, and see* S. L. Act, 1925, ss. 23 and 26) (hereinafter called the Lessors, which expression, where the context admits, includes the persons for the time being entitled in reversion immediately expectant upon the term hereby granted), of the one part, and the X. Company, Limited, whose registered office is at —— (hereinafter called the Tenants, which, &c.; *define as in Prec.* I, *p.* 1116), of the other part:

WITNESSETH, in exercise of all statutory and other powers and in consideration of the rents and royalties hereinafter reserved and of the covenants by the Tenants herein contained, and it is hereby declared as follows:—

Demise.

1. THE Lessors hereby demise unto the Tenants:

(*Continue as in Prec.* I, *p.* 1116, *or Prec.* II, *p.* 1133, *of this Section, omitting, if the Statutory Owners are merely trustees, the covenant by the Lessor for quiet enjoyment by the Lessees and substituting the following covenant*:—)

THE LESSORS' COVENANT.

Covenant by statutory owners that they have done no act to prevent their granting Lease.

EACH of the Lessors, as to his own acts and deeds, but not further or otherwise, hereby covenants with the Tenants that the Covenantor has not done or knowingly suffered or been party or privy to any act, deed or thing whereby he is prevented from concurring in the demise of the mines, rights and privileges

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Express powers of leasing.

(*j*) All express powers of leasing, on whomsoever conferred by the settlement, are exercisable as additional powers by the tenants for life or statutory owners: S. L. Act, 1925, ss. 108–109; express powers (not exercisable by an estate owner) take effect in equity: L. P. Act, 1925, s. 1 (7); 1 Wolst. & Cherry, 11th ed., 149; as to giving legal effect to the exercise of an equitable power: L. P. Act, 1925, s. 3; S. L. Act, 1925, s. 16.

Registered land.

Where the title of the lessors has been registered the usual heading should be placed at the top of the lease: see Forms in Sect. I and notes thereto.

Enfranchised land.

If any enfranchised lands or minerals are included in the lease, and the manorial incidents have not been extinguished, it must be produced to the steward for endorsement within six months and the fines, &c., paid: L. P. Act, 1922, s. 129. In certain manors in South Wales the minerals belonged, by special custom, to the tenant, who had a right to work or demise them without obtaining a licence. As to the effect on the amount of compensation of a right to demise without licence: *ib.*, 13th Sch., Pt. II, para. 13, as explained in L. P. (Amend.) Act, 1926, Sch.

Power to lease without licence.

and other premises hereby expressed to be demised in manner aforesaid:

PROVIDED that the foregoing covenants shall be in satisfaction of any covenant or warranty for quiet enjoyment by the Tenants which would otherwise be implied on the part of the Lessors by law as incident to the demise hereby made.

[*Add other provisions as in Prec.* I *or* II.]

IN WITNESS, &c. (*Add Schedule.*)

No. IV.

LEASE *of* MINES *of* COAL *and other* MINERALS *by* TENANT *for* LIFE *under* SETTLED LAND ACT, ROYALTIES *reserved by* WEIGHT (South Wales Form). (*Legal Estate.*)(*k*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*) BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons for the time being entitled in reversion immediately expectant upon the term hereby granted), of the one [1st] part [C. T., of, &c., and N.T., of, &c. (*the S. L. Act trustees appearing to be such from the vesting instrument, who may for convenience be expressed to be parties where part of the royalties has to be set aside as capital* (*l*) *though they need not execute*) (hereinafter called the Trustees, which expression, where the context admits, means the trustees from time to time of the settlement referred to in the subsisting vesting instrument affecting the premises hereby demised for the purposes of the Settled Land Act, 1925), of the 2nd part], and The —— Company, Limited, whose registered office is at —— (hereinafter called the Company, which expression, where the context admits, includes the persons deriving title under them), of the other [3rd] part: WITNESSETH, in exercise of all statutory and all other powers

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Reference to powers.

(*k*) See Form No. 4, in Pt. I, Sect. I, *supra*. It is not necessary, even in a mining lease, to refer to the statutory or other powers under which it is granted: *Mogridge* v. *Clapp* [1892], 3 Ch. 382, 385; 61 L. J. Ch. 534; L. P. Act, 1925, s. 152.

Mining profits, when capital.

(*l*) See S. L. Act, 1925, s. 47. If the tenant for life is impeachable for waste in respect of minerals, three-fourths, and otherwise one-fourth, of the rent must be set aside as capital money unless a contrary intention appears in the settlement. If there is a contrary intention (as in *Re Rayer* [1913], 2 Ch. 210; 82 L. J. Ch. 461; *Re Hanbury* (No. 2) [1913], 2 Ch. 357; 82 L. J. Ch. 428) no reference will be made to S. L. Act trustees; and see S. L. Act, 1925, s. 110 (4) as to transactions on which no capital money arises. A tenant for life impeachable for waste may, however, work open mines, and only one-fourth of the profits must be set aside: *Re Chaytor* [1900], 2 Ch. 804; 69 L. J. Ch. 837; *Re Hall* [1916], 2 Ch. 488; 86 L. J. Ch. 59.

and in consideration of the rents and royalties hereinafter reserved, and the covenants by the Company herein contained, and it is hereby declared as follows :—

Demise.

1. THE Lessor hereby demises unto the Company :

Parcels.

ALL the seams or veins of coal, culm, blackband, iron ore, ironstone and fireclay now unworked, lying in and under the lands (hereinafter called the mining area), &c. (*see Prec.* II, *p.* 1134, *or if only some of the seams are demised, see Prec.* I, *p.* 1116, *either use the expression* " Tenants " *or* " Company " *throughout as the parties desire*).

Habendum.

TOGETHER with the rights and privileges to be exercised in connexion with the said mines and minerals as hereinafter mentioned :

TO HOLD (except and reserved as hereinafter mentioned) unto the Company from the —— day of ——, 19—, for a term of one hundred years,(m) YIELDING AND PAYING therefor the rents and royalties hereinafter reserved and subject to the provisions hereinafter contained.

RIGHTS AND PRIVILEGES TO BE EXERCISED BY LESSEES.

Liberty to work mines and sink pits, &c., and provide for welfare.

2. THE Company may at all times during the said term (but subject to the restrictions hereinafter expressed) sink, drive, erect, make and construct in, upon and under the mining area so many pits, shafts, engine or other planes, levels, adits, sumps, waterways, airways, engines, engine houses, coke ovens, brick and tile works, machinery, workshops, tramroads, railroads and other roads, communications, watercourses, ponds, spoil heaps and other conveniences as may be necessary or convenient for effectually exploring, winning, working, raising, stacking, converting, manufacturing, transporting or otherwise disposing of the minerals hereby demised, and may erect thereon cottages, dwelling-houses, baths, drying and changing-rooms, club-houses, shops (whether or not in connexion with club-houses), medical, surgical and welfare accommodation (including the provision of gardens and recreation grounds) for the use of workmen and others employed in or about the said mines and of their families and dependents. (*Add other powers as required, see clause* 2 *of Prec.* II, *p.* 1134.)

(m) The term must not exceed 100 years : S. L. Act, 1925, s. 41 ; except with the leave of the court : *ib.*, ss. 46 and 64, unless additional powers are conferred by the settlement. Similar leases may be granted by trustees for sale or personal representatives.

To appropriate part of surface for works.

3. (1) THE Company may appropriate and use for the purposes hereinbefore expressed such part of the surface of the mining area as may be agreed on between the Lessor and the Company as suitable and proper for the purpose :

(2) If any land proposed to be appropriated for surface works by the Company shall be objected to by the Lessor the question whether or not the same is suitable and proper shall be referred to arbitration under the provisions hereinafter contained :

(3) If upon such arbitration the proposed site shall be found to be suitable and proper the same shall be deemed to have been agreed to for the purposes of this clause.

To open a quarry for building stone.

4. THE Company may open and work a quarry, and may quarry stones, in some proper and convenient situation approved of by the Lessor or his agent, and may use and employ the same for the purposes of this Lease and the works in connexion therewith, or for sale or use elsewhere.

To work by instroke and outstroke.(*n*)

5. THE Company may work the mines and minerals hereby demised by instroke from any adjoining mines belonging to or held by them, and the pits and shafts thereof, and may also work any adjoining mines belonging to or held by them by outstroke through the mines hereby demised and the pits and shafts thereof.

Reservation of rights to Lessor as regards minerals not included in Lease.

6. (1) NOTHING herein contained shall prevent the Lessor, or any person authorised by him—

(i) From working (with or without leaving any vertical or lateral support for the mines or works hereby demised) any mines or minerals in and under the mining area, other than those included in this Lease, or

(ii) From sinking pits or shafts, or constructing other works upon or under the mining area for that purpose :

Provided that no unnecessary obstruction be thereby caused to the operations or works of the Company in connexion with the mines and minerals hereby demised :

(2) If any injury or physical damage shall be done thereto, then proper compensation shall be paid to the Company for the same, the amount of such compensation to be settled, in case of difference, by arbitration.(*o*)

(*n*) See note to clause 2 of Prec. II of this Section, p. 1134.

(*o*) If any known seams of coal are reserved, wider powers of working the excepted minerals should be reserved, see Prec. I, p. 1120, *supra*.

RENTS AND ROYALTIES.

Galeage rents or royalties.

7. THE Company shall pay, during the said term, for every customary ton comprising 2,520 lbs. of coal, culm, blackband, ironstone, fireclay and building stone which may be worked and got from or out of the mines hereby demised (other than such coal and building stone as is hereinafter exempted from galeage) the following galeages (namely) :—

(1) For large coal, the sum of eightpence :

(2) For small coal that will pass through a screen, the apertures between the bars of which shall not exceed one inch and one-eighth of an inch in width, the sum of fourpence :

(3) For blackband and ironstone, the sum of eightpence :

(4) For fireclay, the sum of fourpence :

(5) For building stone, the sum of threepence :

And the said galeage rents to be paid quarterly on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first of such quarterly payments to be deemed to have become due on the —— day of ——, 19—.

Minimum rent.

8. IF in any year of the said term the minerals worked from the mines hereby demised shall not produce at the galeage rates hereinbefore mentioned the sum of £——, then and in such case the Company shall nevertheless pay the sum of £——, as and for such one year's galeage, by quarterly payments as aforesaid, TO THE INTENT that the rent shall not in any case be less than £—— per annum during the said term, whether or not sufficient minerals to produce that amount at the galeage rates hereinbefore mentioned, or any minerals, be worked.(*p*)

Division of term into averaging periods.

9. FOR the purposes of the clause next hereinafter contained, the term hereby granted shall be divided into successive periods of three years each, the first period to be deemed to have commenced with the commencement of this Lease, and to end at the expiration of three years from such commencement ; the second period to commence at the end of the first period, and to end at the expiration of three years from its own commencement ; and every subsequent period to commence at the end of the period immediately preceding it, and to end at the expiration of three years from its own commencement.

(*p*) Under the powers of granting mining leases conferred by the S. L. Act a lease reserving an acreage rent with a minimum rent may be reserved : *Re Aldam's S. E.* [1902], 2 Ch. 46 ; 71 L. J. Ch. 552.

Average clause.

10. IF (*q*) in any triennial period it shall happen that the quantity of minerals worked by the Company in any one year or two years of that period shall be more than sufficient to produce, at the galeage rates aforesaid, the full rent of £—— for that year, or for each of those years, but the quantity worked in the other years or year of the same period shall be insufficient for that purpose, then and in every such case the overworkings of that one year, or those two years, shall be set off against and go in aid of the short workings of the other year or years of the same period, and the accounts shall be adjusted at the end of every quarter of a year on that footing, TO THE INTENT that the total sum payable by the Company for galeage rents during each triennial period shall be as follows (namely):—

(1) If the galeages which would have been payable under clause 7 hereof, if clause 8 had been omitted therefrom, shall exceed £——, then the amount of those galeages, and no more:

(2) But if the same shall be less than £——, then the sum of £——.

Wayleave rent.(*r*)

11. THE Company shall pay a wayleave rent of one penny for every customary ton comprising 2,520 lbs. of coal, culm, ironstone, blackband, fireclay and other substance, the produce of any mines not hereby demised, which shall be brought to the surface through the mines hereby demised, and the pits and shafts thereof, under the powers aforesaid.

Exemptions from galeage. Coal used for engines.

12. (1) THE coal and culm consumed by any engine which may be employed for working the minerals hereby demised, or for pumping water thereout, or which shall be used at the ventilating furnaces, or otherwise consumed in raising the said minerals, shall be exempt from galeage:

(2) But if the Company shall work any other minerals in conjunction with the demised minerals, the coal and culm used for the said purposes shall be fairly apportioned to each property according to the quantity of minerals which may have been respectively worked therefrom.

Stone used for buildings.

13. ALL building stone used in and for the purposes of the mines hereby demised and the works authorised by this Lease shall be exempted from galeage.

Average clause.

(*q*) Under this plan the overworkings of preceding years in the same averaging period are applicable to make good short workings in a subsequent year. The more common arrangement is that which is adopted in Prec. I, see clauses 8 and 9, p. 1122, *supra*.

(*r*) As to wayleave rent: MacSwinney, 5th ed., 295.

Surface rent.(s)

14. (1) THE Company shall (in addition to the tenant's compensation for damage to crops) pay a yearly rent of £—— for every acre of land the surface whereof shall be occupied or used by the Company for any of the purposes of this Lease, and so in proportion for any less quantity than an acre, the said surface rent to be paid by equal quarterly payments on the same days as the galeage rents are hereinbefore made payable, and the first quarterly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall commence, and the last quarterly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall have ceased:

(2) If any difference shall arise as to what ought to be considered the occupation or use of the surface of any land for the purposes aforesaid, or as to the day on which such occupation or use shall have commenced, or as to the amount of rent or damage payable under the reservation aforesaid, the matter in difference shall be settled by arbitration.

[Direction to Lessees to pay one-fourth of rents to trustees.]

[15. THE Lessor hereby directs the Company to pay to the Trustees or other the persons who shall for the time being appear by the principal vesting instrument for the time being in force or by any endorsements thereon to be the trustees of the settlement affecting the premises hereby demised for the purposes of the Settled Land Act, 1925, the one-fourth part of the aforesaid rents and royalties which under section forty-seven of that Act ought to be set aside as capital money.(t)]

LESSEES' COVENANTS.

Lessees' covenants.(u)

16. THE Company hereby covenant with the Lessor in manner following, namely :—

(1) (*To pay rents and observe provisions as in clause* 12 (1) *of Prec.* I, *p.* 1124, *supra*) :

(s) The I. R. Commrs. do not claim mineral rights duty on surface rents where land is let to mining lessees: 56 Sol. J. 312.

Payment to reversioner.

(t) The whole rent is payable to the tenant for life as the reversioner: L. P. Act, 1925, s. 141 (2); but lessees usually require a clause to be inserted in this form. The provisions of s. 47 will be sufficiently complied with if the tenant for life pays to the trustees the part of the rent which is made capital money by the Act. In many cases settlements expressly authorise the whole rent to be paid in the first instance to the tenant for life, though part is to be set aside as capital: *Re Fullerton* [1906], 2 Ch. 138; 75 L. J. Ch. 552. If this is done no reference will be made in the lease to S. L. Act trustees. There must be at least two trustees or a trust corporation to give a receipt for the capital.

(u) As to the covenants being deemed to have been made on behalf of the assigns: L. P. Act, 1925, s. 79.

(2) (*Covenant to pay rates and taxes, as in clause* 12 (2) *of Prec.* I, *p.* 1124, *supra, substituting* "Company" *for* "Tenants"):

To work mines properly.

(3) During the said term to win and work the mines hereby demised regularly and properly according to the best and most approved mode of working similar mines in the County of ——, time lost by strikes, general lock-outs, or accidents excepted:

To leave a barrier.

(4) To leave a barrier of twenty yards in width in each and every seam of coal along every portion of the —— boundary of the mines hereby demised, and not to work the same or diminish its width (except so far as may be necessary in the exercise of the privileges of [instroke or] outstroke hereinbefore granted) without the consent in writing of the Lessor or his agent:

To make trials of faults or dislocations.

(5) If in working the minerals hereby demised any fault or dislocation shall at any time be discovered to make or cause to be made at the expense of the Company (if required so to do by the Lessor by notice in writing) proper and reasonable trials through such fault or dislocation for the purpose of ascertaining whether or not the vein or seam of coal interfered with or intercepted, and for the time being in work, is workable beyond such fault or dislocation, and if such vein or seam shall be found workable, at their own expense to continue the working thereof:

To put up weighing machines.

(6) To erect and maintain at the entrance of each adit, pit, shaft, quarry or working (or at some convenient places upon or as nearly adjacent to the demised premises as may be practicable), good, sufficient and properly-constructed weighing machines, at which the whole of the minerals that may be worked, raised and brought to bank out of the mines hereby demised (as well as any minerals brought from other mines by virtue of the power for that purpose hereinbefore granted) shall be accurately weighed and daily accounts thereof kept in books suitable for the purpose:

To allow Lessor to test same.

(7) That the Lessor or his agent may (but giving the Company as little inconvenience as possible) inspect the machines and weights which may be used for weighing the minerals worked out of or conveyed from, through, over or across the mines hereby demised, and adopt such methods as may be deemed necessary for testing their accuracy:

Books and accounts to be accessible.

(8) To keep open the weighing machine books and checkweighman's and quarrymen's accounts (recording the quantities of minerals worked, raised or carried away from the premises) at all times during working hours for the inspection of the

Lessor or his agent, who may make extracts therefrom or take copies thereof:

To deliver quarterly accounts to Lessor.

(9) To deliver to the Lessor or his agent within fourteen days from each of the quarter days hereinbefore fixed for payment of rent or royalties a perfect abstract from the books of account for the preceding three months, and to verify the same, if required, by the statutory declaration of the clerk or book-keeper, and also of the actual manager of the Company so far as his knowledge extends:

Lessor may employ a check clerk.

(10) That the Lessor, if he desires to do so, may employ a check clerk to see all the minerals worked from the mines thereby demised or from other mines and subject to outstroke or wayleave rent brought out, and to keep an account thereof, and to check the returns and accounts of the Company:

To repair and deliver up in repair.

(11) To preserve the mines hereby demised from all avoidable damage and injury, and to keep all the levels, adits, drifts, shafts, pits, airways, watercourses, ponds, cottages, clubhouses and other erections, engine houses, sheds, workshops and other conveniences, railroads and other roads and ways in good order, repair and condition (except such of the works and buildings as shall from time to time become unnecessary for the further working of the said mines), and to deliver up the same in such state and condition at the end or sooner determination of the said term:

Lessor may enter mines to inspect condition thereof.

(12) That the Lessor, or his agent, servants and workmen duly authorised, may from time to time enter into and upon and inspect and survey the mines hereby demised, and all buildings and works connected therewith, and also (so far as the Company can grant this privilege) any adjoining or other mines of the Company worked in connexion with the mines hereby demised, and for those purposes make use of the pits, shafts, levels, roads, horses, workmen, ropes, machinery and other works or conveniences of the Company, and for the purposes of such inspection and surveys to have, free of cost to the Lessor, the assistance of the Company's resident manager, or one or more of their servants or workmen having a competent knowledge of the Company's workings:

Plans.(*v*)

(13) To prepare and keep an accurate plan drawn to a scale of two chains to an inch of all the workings in the mines hereby demised, and also in any adjoining mines connected therewith by instroke or outstroke, upon which the extent, position and

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(*v*) As to statutory liability to keep plans: Coal Mines Act, 1911, ss. 20, 21.

actual condition of the mines and premises shall from time to time (and at least once in every six months) be set forth and delineated, and that the Lessor or his agent may at all reasonable times inspect and make copies of any such plan :

Pits, &c., to be properly secured.

(14) To so secure the pits, drifts, adits, machinery, railways and other works of the Company that no injury may result therefrom to man or beast, and to properly secure and fence all tramways, railways, inclined planes or other roads (upon the requirement of the Lessor) from the properties and enclosures through which they may pass ; and when any pits or shafts shall have become useless or unnecessary, to either fill up the same with earth or waste, or to surround them with a well-constructed wall of masonry at least six feet in height, or to cover them with a good and sufficient arch of stone or brick :

Workings not to be carried under existing buildings without licence.

(15) Unless authorised in writing so to do by the Lessor, not to extend the workings of the Company under any farm or other houses, cottages or buildings now standing and being on the mining area, nor within a distance of ten yards on each side thereof, and in the event of any damage occurring to such houses, cottages or buildings by the breach of this covenant, to pay reasonable compensation in respect of the same, and to keep the Lessor fully and sufficiently indemnified from and against all proceedings or claims in respect thereof :

Lessees not to grant wayleaves or assign mines without consent of Lessor.

(16) Not at any time during the said term to grant to or suffer any person to use any wayleaves, drifts, levels, outstrokes, waterways or other communications from, into, through, under or over the mines hereby demised, and the works belonging thereto, without the previous consent in writing of the Lessor or his agent, nor to underlet or assign the mines hereby demised or any part thereof, without the consent in writing of the Lessor, which consent (in the event of all the covenants and provisions herein contained being duly observed and performed up to the period when the same shall be required to be given), shall not be withheld without substantial grounds of objection :

Provided as follows—

(i) In the event of any difference as to the operation of this clause it shall be settled by arbitration ;

Proviso for re-entry.

Relief against forfeiture.

(*w*) See that the proviso for re-entry is restricted to thirty days : S. L. Act, 1925, s. 42. In a lease to a company the proviso should have effect if an order or resolution is made or passed for winding up except for purposes of reconstruction. Relief against forfeiture, in the case of a mining lease, will not be granted if the lessee becomes bankrupt, or if a lessee company is wound up : L. P. Act, 1925, s. 146 (9) ; 1 Wolst. & Cherry, 11th ed., 389.

(ii) Such consent shall not be required in the case of an underlease or assignment for the purpose of the reconstruction of the Company or of the issue of debentures or debenture stock.

(*Lessor's covenants and general provisions*,(w) *as in Prec.* I, *p.* 1129, *or* II, *p.* 1146, *substituting* "Company" *for* "Tenants.")

IN WITNESS, &c. [*Add Schedule.*]

No. V.

LEASE *of a* SEAM *of* COAL *lying under another seam already leased.*(x) (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and The —— Company, Limited, whose registered office is at —— (hereinafter called the Company, which expression, where the context admits, includes the persons deriving title under them), of the other part: Parties.

WITNESSETH, in consideration of the rents and royalties and covenants by the Company hereinafter reserved and contained, and it is hereby declared as follows:—

1. THE Lessor hereby demises unto the Company: Demise.

ALL THOSE the mines, beds, seams and veins of coal, cannel, ironstone, fireclay, and other minerals (if any) lying under the seam of coal known as the X Seam under the lands (hereinafter called the mining area) situated in the Parish of ——, in the County of ——, all which lands are more particularly described in the Schedule hereto, and are delineated on the plan hereto and thereon edged pink, TOGETHER with the easements, rights, and privileges hereinafter authorised to be exercised in connexion with the mines and minerals hereby demised (hereinafter called the demised mines), Parcels.

TO HOLD (except and reserved as hereinafter mentioned) unto the Company from the —— day of ——, 19—, for the term of one hundred years (determinable as hereinafter mentioned), subject to the provisions hereinafter contained, and YIELDING AND PAYING therefor the rents and royalties hereinafter mentioned. Habendum.

(x) The form which this precedent takes must of necessity depend on the manner in which the lower mines and rights to work them are reserved in the lease of the higher seam. For cases where the lessor is not an absolute owner, or the title is registered, see Forms in Pt. I, Sect. I, *supra*, and notes thereto.

LESSEE'S RIGHTS AND PRIVILEGES.

Powers to work.

2. THE Company may at all times during the said term work the demised mines with or without leaving any vertical or lateral support for the said X Seam or for the surface or any buildings erected or to be erected thereon or on any part thereof, or for any adjoining minerals (but so that full compensation shall be paid for all damage arising to any cottages or buildings now erected on the said surface, and to any adjacent lands and minerals, and to any minerals or works and premises excepted out of this Lease by reason of any workings by the Company), and may work from or through the demised mines, by outstroke or otherwise, any other mines and minerals of any description belonging to or for the time being held by the Company, and also may (in common with any other persons having a like right and subject to the rights of such persons) carry over the surface of the mining area and of the adjoining lands hereinafter defined, and may carry or authorise to be carried through the demised mines the produce of the demised mines or of any other mines (whether or not belonging to the Company free from any wayleave rent), and may (in common as aforesaid and subject as hereinafter provided) exercise and enjoy in and upon and under the mining area all easements, rights and privileges necessary or convenient for the purposes aforesaid, and in particular may (in common as aforesaid and subject as hereinafter provided) do all or any of the following things (that is to say) :—

To sink pits, &c., and provide for welfare of workmen.

(1) Sink, drive, make, erect, set up, and construct in, upon, over, or under the mining area, and through the excepted minerals to the reasonable satisfaction of the Lessor's agent, pits, shafts, outstrokes, instrokes, drifts, levels, watercourses, aircourses, engines, machinery, counting-houses, smithies sheds, furnaces, kilns, ovens, erections, and other works, and also cottages, baths, drying and changing rooms, clubhouses, shops, medical, surgical and welfare accommodation (including gardens and recreation grounds) for the use of workmen employed in connexion with the Lessor's mineral properties (whether or not included in this Lease), their families and dependents, and may use (in common as aforesaid and subject as hereinafter provided) all works of the above description (including the X shafts) now existing in connexion with the demised mines, whether for the purpose of pumping, ventilating, conveying minerals, or otherwise.

(2) Construct and use (in common as aforesaid and subject as hereinafter provided) railroads, sidings, tramroads and other roads, on and over the mining area, and also on and over the lands delineated on the said plan, and thereon edged blue (hereinafter referred to as the adjoining lands), and may (in common and subject as aforesaid) use such of the roads of the above description now existing on any part of the mining area and adjoining lands in connexion with the demised mines as the Lessor or his agent may from time to time approve, but such approval shall not be unreasonably withheld:

To construct railroads, &c.

(3) Appropriate (so far as the same may not be appropriated by any person having a prior right) the water upon or within the mining area and collect the same in ponds and reservoirs or otherwise, but so that the Company shall not, in exercising this privilege, poison, foul, impregnate, or otherwise deteriorate the present supply of drinking water running from under the tip to the cottages or other dwelling-houses so as to render it useless or unprofitable, or pollute any river or stream:

To appropriate water and not to pollute.

(4) Use and appropriate (so far as the same may not be used or appropriated by any person having a prior right) a sufficient part of the mining area for depositing and heaping thereon the coal, ironstone, and fireclay to be raised and gotten from the demised mines and such other adjoining mines as may for the time being belong to or be held by the Company, and all the spoil, earth, soil, and other substances brought to the surface in or about the working of the same:

To deposit coal, &c.

(5) Convert coal into coke and patent fuel, calcine, ironstone, and manufacture fireclay into bricks and other articles, whether for colliery purposes or for sale or otherwise:

To make coke, &c.

(6) Dig, work, and get common clay and stone from the demised mines, and manufacture the common clay into bricks and tiles for the purposes of the colliery erections and works hereby authorised or for sale or any other purpose, the Company paying a royalty upon the clay manufactured into bricks or for sale:

To get clay and stone.

(7) Provided that so much of every bed, vein and seam of coal, ironstone and fireclay hereby demised shall be left unworked as will leave within the limits of this demise a barrier of thirty-three yards in breadth or thickness separating the demised mines from the adjoining mines, and all outstroke and instroke drifts made through the said barrier for the purpose of working adjoining mines as aforesaid shall be of such size and in such situations as shall have been previously approved of by the

Barriers to be left.

Lessor or his agent, and all such drifts shall be so made as to be capable of being easily and effectually closed by frame-dams when the use thereof has ceased or for the purpose of preventing the flooding of the demised mines, and so that such drifts shall at the cost of the Company be effectually closed if and whenever the Lessor or his agent shall in writing require the same to be closed :

Surface rights.

(8) Provided also that all surface operations shall be subject to the rights of any person having a prior right, and shall be carried on upon such parts only of the mining area and the adjoining lands as shall be selected for that purpose in manner following, that is to say :—

(i) Whenever the Company shall require to occupy or use any land for surface operations the Company shall give a notice in writing to the Lessor or his agent specifying the site proposed for such surface operations ;

(ii) If the Lessor or his agent objects to the site so proposed he shall within fourteen days after receiving such notice himself select a site and notify the same in writing to the Company, and the Company shall be at liberty at any time within fourteen days after the selection of such site shall have been made and notified to the Company as aforesaid, but not afterwards, to object to the same as being unsuitable or inconvenient for the purpose for which the same is required, and to notify such objection in writing to the Lessor or his agent ;

(iii) In case of such objection being made and notified as aforesaid the question whether or not the site is suitable and convenient shall be referred to arbitration under the provision for that purpose hereinafter contained.

Erection of buildings.

(9) (i) No houses for residence or other buildings shall be erected by the Company under the aforesaid power on any site appropriated for the use of any other person having a prior right, or until the plans, accommodation, and sanitary arrangements of such houses shall have been submitted to the Lessor and approved of by him ;

(ii) In case a difference of opinion on any points relating to plans, accommodation, or sanitary arrangements shall arise between the Lessor and the Company the same shall be referred to arbitration ;

(iii) No residential houses so erected (other than workmen's cottages) shall be used except for the purpose of residence of agents and engineers employed in or about the demised mines and works, and in particular no trade of any sort shall be carried on in any residential house, but this restriction shall not apply to shops and stores erected on sites approved by the Lessor for the convenience of workmen.

Power for lessees to remove coal raised, plant, &c., at end of term.

(10) The Company may at any time within six months after the determination of this Lease carry away and dispose of any coal, ironstone, or fireclay which shall have been raised during the said term, and also remove all plant, machinery and utensils upon or under the mining area being in the nature of trade or tenant's fixtures, or other moveable things of the Company which the Lessor shall not elect to purchase under the provision for that purpose hereinafter contained :

(11) Provided that (except in the cases before expressly referred to) the exercise of all or any of the easements, rights and privileges hereby conferred on the Company shall be subject to the approval of the Lessor or his agent, but such approval shall not be unreasonably withheld.

RIGHTS EXCEPTED OUT OF THIS DEMISE.

Reservations.

3. THE following minerals, rights and privileges are hereby excepted out of this demise (that is to say) :—

The X Seam, &c.

(1) ALL THAT the seam or vein of coal called the X Seam and all other the mines, beds, seams and veins of coal, cannel, ironstone and fireclay, as well opened as unopened, lying above the X Seam under the mining area, TOGETHER with the easements, rights and privileges which were reserved by a Lease (hereinafter called the X Lease) dated, &c. (being a lease of the X Seam for a term of —— years from, &c.), and accordingly this Lease, so far as it affects the premises comprised in the X Lease, shall take effect by virtue of the exceptions and reservations therein contained, and the Company shall be bound (in the case of user in common) to contribute a just and fair proportion of the expenses of making and keeping any canal, railway, tramway, waggonway, or other convenience or work for the time being in existence (which may be used in common with the lessee for the time being under the X Lease) in repair and working order, the amount of such proportion to be settled in case of dispute by arbitration, and also to pay fair and proper compensation to such lessee for all loss, damage, or injury which such lessee may sustain or incur by reason of the exercise by the Company of any rights and privileges reserved to the Lessor by the X Lease, the amount of such compensation to be settled in case of difference by arbitration :

Consent of the X lessee to be obtained when requisite.

(2) Where by virtue of the X Lease any of the buildings, easements, rights or privileges thereby reserved may be exercised only with the consent of the lessee thereunder then and in every such case such consent shall be obtained before the Company exercise or use the same, and the Company shall be deemed to have notice of all the contents of the X Lease and shall take subject thereto so far as the same may affect this Lease :

On determination of X Lease the minerals comprised therein to belong to Lessor.

(3) After the expiration or sooner determination of the X Lease the Lessor shall be entitled in fee simple to all the mines, minerals, easements, rights and privileges thereby demised to the lessee thereunder (except so far as such mines and minerals may have been exhausted by virtue of the provisions of that Lease), and the Lessor shall be entitled to dispose of or deal with the premises accordingly, and in addition shall have the like rights and powers as the lessee under the X Lease would have had if that Lease had remained subsisting.

Power to Lessor to vary the X Lease.

(4) The Lessor may at any time during the subsistence of the X Lease modify, extend or vary any of the provisions thereof, provided that such modifications or variations do not affect prejudicially the rights of the Company hereunder, and nothing herein contained shall affect the title of the Lessor to the reversion expectant on the term granted by the X Lease.

RENTS AND ROYALTIES RESERVED.

Certain rent.

4. (1) THE Company shall pay to the Lessor for the demised mines the certain yearly rent of £—— by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first half-yearly payment to become due on the —— day of —— 19—, in respect of which certain yearly rent the Company may work and get in every year from and out of the demised mines such a quantity of coal, ironstone and fireclay as, at the rates hereinafter mentioned, would produce for that year royalties equal in amount to the said certain rent : Provided that said certain rent shall always be paid whether or not such quantity shall in fact be gotten :

Royalties on coal and fireclay by weight and on ironstone according to selling price.

(2) The Company shall pay to the Lessor a royalty of sixpence for every ton of coal or cannel, threepence for every ton of fireclay which shall be used or sold by the Company (and so in proportion for every less quantity), and a sum equal to one-twentieth part of the value (to be ascertained in the manner hereinafter mentioned) of all ironstone which shall be raised or gotten from or out of the demised mines in any year of the said

term over and above the quantities which the Company is hereinbefore authorised to work and get in respect of the said certain rent:

Limited power to work shorts.

(3) Provided, that if in any year the Company shall not raise and get from or out of the demised mines such a quantity of coal, cannel, ironstone and fireclay as at the above-mentioned rates would produce for that year the amount of the certain rent hereby reserved, then and in every such case the Company may during the next six months of the said term, but not afterwards, raise and get from or out of the demised mines such a quantity of coal, cannel, ironstone and fireclay as shall be required to make up the deficiency without paying any royalties for the same other than the said certain rent, but the over-workings of any preceding years shall not come in aid of or be applied to make good the deficiency or shortworkings in any subsequent year:

Time for payment of royalties.

(4) The royalties and rents above reserved (other than the said certain rent) shall be paid respectively on the —— day of —— and the —— day of —— in every year in respect of the coal, cannel, ironstone, fireclay and minerals raised, gotten, led or carried during the then preceding half-year and in respect of which the same shall be payable:

Weights, how ascertained.

(5) The said royalties payable in respect of coal, cannel and fireclay shall be calculated upon the weights as the same shall be first worked and gotten and before screening, washing or cleansing:

"Ton."

(6) In all cases a ton shall be reckoned at 2,240 lbs.:

Market price of ironstone.

(7) The said royalty payable in respect of ironstone shall be calculated on the market value of the same at the mines when first raised or gotten, and any dispute as to the value shall be settled by arbitration:

Minerals used for colliery purposes.

(8) The Company may in each year have and retain for the usual customary purposes of the Colliery or otherwise one-twentieth part of the whole weights and quantities of coal without paying any royalties for the same, whether such coal shall or shall not actually be used in that year for the purposes aforesaid:

Surface rent.(y)

(9) (i) The Company shall also pay to the Lessor in respect of every acre of land the surface whereof shall be occupied or used by

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(y) The I. R. C. do not claim mineral rights duty on surface rents where land is let to mining lessees: 56 Sol. J. 312.

the Company for any purpose whatever under the powers hereof, and so in proportion for any less quantity than an acre, a yearly rent of £2, the said surface rent to be paid half-yearly on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on such of the said half-yearly days as shall happen next after such occupation or user shall have commenced, and the last of such payments to be made on the half-yearly day of payment which shall next happen after such occupation or user shall have ceased and the land shall have been restored and rendered fit for cultivation again or shall have been paid for at the fee simple value as provided in the covenants by the Company for that purpose herein contained;

(ii) If any difference of opinion shall arise as to what surface ought to be considered to be in the occupation or user of the Company for the purposes aforesaid or as to the day on which such occupation or user shall have commenced or as to whether such surface shall have been restored and rendered fit for cultivation, or as to the amount of rent payable under this reservation, the matter in difference shall be settled by arbitration.

The Lessees' Covenants.

5. The Company hereby covenant with the Lessor in manner following, that is to say :—

To pay rents.

(1) To pay the rents and royalties reserved by this Lease at the times and in the manner hereinbefore appointed :

(2) (*To pay rates and taxes as in Prec.* I, *p.* 1124) :

(3) (*To keep accounts as in Prec.* II, *p.* 1141) :

To deliver accounts showing market value of ironstone.

(4) On the —— day of —— and the —— day of —— in every year to deliver to the Lessor or his agent a true account showing the respective total amounts of the coal, cannel and fireclay raised or gotten during the preceding half-year from the demised mines, and of the common clay or fireclay which shall be used or sold by the Company in respect of which royalty is payable as aforesaid, and distinguishing the amount of coal, cannel and fireclay subject to royalties or rents, from the amount in respect of which any exemption is claimed, and the particulars of all sales thereof and the amount of ironstone raised every day and also the market value at the mines on every working day during such half-year of ironstone raised or gotten from the demised mines, and, if so required, to verify such accounts and

particulars by the statutory declaration of their agent, and to give all explanations of the said accounts and particulars and any matter or thing mentioned or referred to therein which the Lessor or his agent may require :

(5) (*To keep plans and sections as in Prec.* II, *p.* 1141, *and add further covenants as required. See Prec.* I *and* II, *pp.* 1125, 1146.)

(*Also add the following covenant*,)

Covenant for indemnity.

(i) Within one month after the end of every year of the said term to pay to the Lessor or his tenants full and reasonable compensation for all injury or damage done during the preceding year to the cottages or buildings now erected [or hereafter to be erected] on the surface or in or about the carrying on of the works hereby authorised, the amount of such compensation to be settled in case of dispute by arbitration ;

(ii) At all times hereafter to keep the Lessor indemnified from all claims and demands by the lessee or other persons interested under the X Lease, or by the tenants or occupiers of any part of the mining area, or of the adjoining lands, and by the owners and occupiers of any property in the neighbourhood of the demised mines on account of any subsidence or damage caused directly or indirectly by any of the operations of the Company, whether by virtue of any power herein contained or otherwise.

COVENANT BY THE LESSOR.

For quiet enjoyment subject to the Lease of the higher seam.

6. (1) THE Lessor hereby covenants with the Company that the Lessor (meaning himself personally) and any person rightfully deriving title under him, has not done or knowingly suffered or been party or privy to any act, deed, or thing, whereby the Lessor is prevented from demising the said mines and premises and conferring the rights and privileges hereby expressed to be demised in manner aforesaid subject to the provisions of the X Lease so far as the same affect the premises :

(2) The foregoing covenant shall be in satisfaction of any covenant or warranty by the Lessor for quiet enjoyment by the Company which would otherwise be implied by law as incident to the demise hereby made.

GENERAL PROVISIONS.

(*Add general provisions, see Prec.* I *or* II, *pp.* 1129, 1146).

IN WITNESS, &c. (*Add Schedule.*)

No. VI.

LEASE *of a* BRICKFIELD. (*Legal Estate.*)(z)

Parties.

THIS LEASE [UNDERLEASE], made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context so admits, includes the persons deriving title under him), of the other part:

WITNESSETH, in consideration of the rents and royalties hereinafter reserved and of the covenants by the Tenant herein contained, and it is hereby declared as follows:—

Demise.

1. THE Lessor hereby demises unto the Tenant:

Parcels.

ALL THAT piece of land, &c. (*see Forms, Sect.* II, *Conv. on Sale, Vol.* I, *pp.* 471, *et seq.*),

Right to dig clay, &c., and to manufacture bricks.

TOGETHER with the right to dig and get out of the said land, clay, brick-earth, sand and other materials used in the manufacture of bricks, and to manufacture the same into bricks, draining tiles or other ware in and upon the said land, And also with the right to make and place in, over and upon the said land, for the purposes aforesaid, sheds, buildings, roads, drains, watercourses and other works and conveniences:

PROVIDED that no clay, earth or other materials shall be dug and no works carried on within —— yards of the boundary fences on the —— and —— sides of the said land:

TO HOLD unto the Tenant for the term of —— years from the —— day of ——, 19—, for the term of —— years, Yielding and Paying the rents and royalties hereinafter reserved and subject to the provisions hereinafter contained.

Certain rent.

2. (1) THE Tenant shall, during the said term, pay [to the Lessor] in respect of the premises hereby demised the certain yearly rent of £——, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of —— next:

(2) The Tenant may in respect of such rent in each year manufacture on the said land so many bricks, tiles or other articles of ware as according to the rates hereinafter mentioned would produce for that year royalties amounting to £——.

Royalty for bricks, &c.

3. (1) THE Tenant shall on the —— day of —— in every year

(z) For cases where the lessor is not an absolute owner or where the title to the land is registered, see Forms in Pt. I, Sect. I, pp. 1016, *et seq.*, and notes thereto.

pay [to the Lessor] in respect of all bricks, draining tiles and other ware manufactured during the preceding year on the said land over and above the number or quantity which the Tenant is hereinbefore authorised to manufacture in respect of the said certain rent the following royalties (that is to say):

(i) A royalty of 2*s.* sterling for every 1,000 bricks or draining tiles; and,

(ii) A royalty equivalent in amount to the sum of 1*s.* 4*d.* for every 20*s.* in value thereof at the kiln of any article or ware other than bricks or draining tiles manufactured as aforesaid: (*a*)

(2) Provided that if in any one year the Tenant shall manufacture on the said land less than the number of bricks, tiles or other articles which he is hereinbefore authorised to manufacture in respect of the said certain rent, then and in every such case he may in any subsequent year of the said term manufacture so many bricks, tiles or other articles as will make up the deficiency without paying any royalty for the same beyond the certain rent:

Provided that the certain rent shall be always paid whatever may be the number of bricks, tiles or other articles manufactured.

Covenants by lessee.

4. THE Tenant hereby covenants with the Lessor in manner following (that is to say):—

To pay rent.

(1) To pay the said rent and royalties at the times and in manner aforesaid, and also to observe and perform all the provisions herein contained which are or ought on the part of the Tenant to be observed and performed:

(2) (*Covenant to pay rates and taxes as in clause* 12 *of Prec.* I, *of this Section, p.* 1124):

Not to use land for any other purpose than a brickfield.

(3) Not to use the land hereby demised for any other purpose than as a brickfield, and to manufacture all the clay and other materials gotten therefrom into bricks, tiles or other ware on the said land and not elsewhere: [All the bricks and draining tiles to be of the common and ordinary size.]

To keep proper accounts.

(4) For the purpose of ascertaining the amount of royalties payable for the time being as aforesaid, to keep proper and correct books of account showing the number of bricks, tiles and other articles manufactured on the said land, and from time to time to deliver to the Lessor or his agent a correct abstract of the said books of account for the then preceding year, and to verify the same by the statutory declaration of himself

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Mineral rights duty, &c.

(*a*) No mineral rights duty is payable in respect of common clay, common brick clay, common brick earth, sand, chalk, limestone or gravel: Fin. (1909-10) Act, 1910, ss. 20 (5), 22 (8).

or his foreman if required, and to permit the Lessor and his agent at all reasonable times to inspect the said books of account and to take extracts therefrom :

To keep buildings, &c., in repair.

(5) At all times during the said term to keep all sheds, buildings, kilns and other erections now standing or which shall hereafter be erected upon the said land under the powers hereof in good and substantial repair and condition, and the same in such good and substantial repair to deliver up to the Lessor at the end of the said term :

To carry on works properly.

(6) At all times to carry on the works hereby authorised in a proper and workmanlike manner, and to keep indemnified the Lessor from and against all proceedings, costs, claims and demands by reason of any injury to adjoining property or of any nuisance or annoyance arising from the carrying on of the said works:

Lessor may enter and inspect works.

(7) To permit the Lessor or his agent at all reasonable times during the said term to enter into and upon the land hereby demised for the purpose of inspecting the works therein :

Lessee to preserve trees, and to permit Lessor to plant near hedgerows.

(8) Not to cut down, destroy or injure any trees standing on the said land, and to permit the Lessor to plant trees on the said land within —— yards of the hedgerows on the —— and —— sides thereof :

To restore land to original condition.

(9) Whenever any land shall cease to be used for the purposes of this demise, to restore the surface thereof to its original state and condition as far as is practicable, unless the Lessor shall require the Tenant to leave the same in its actual state :

Not to remove any plant in last year.

(10) During the last year of the said term not to remove or destroy any machinery or plant standing and being on the said land, and used for the purposes of the works hereby authorised, without the consent of the Lessor, but to keep the same on the said land or in or about the said works in order to enable the Lessor to exercise the option of purchasing the same hereinafter conferred on him :

Power for Lessor to purchase plant.

(11) If at the expiration or other sooner determination of the term hereby granted the Lessor shall be desirous of purchasing all or any of the machinery and plant in and upon the said land which shall have been provided by the Tenant for the purposes of the works hereby authorised, and shall give notice of such desire in writing to the Tenant at his office on the said works, either during the subsistence of the said term or within at least one month after the determination thereof, then and in such case to leave the said machinery and plant, or such

part thereof as the Lessor shall elect to purchase as aforesaid, to be taken by the Lessor at a price to be determined by arbitration in case of difference:

(12) Not to assign, underlet or part with the possession of the land hereby demised, or any part thereof, without the consent in writing of the Lessor [but such consent shall not be unreasonably withheld].

Not to assign without licence.

5. THE Lessor hereby covenants with the Tenant that the Tenant paying the rent and royalties hereby reserved and observing and performing the covenants and conditions herein contained, and on the part of the Tenant to be observed and performed, shall peaceably and quietly hold and enjoy the premises hereby demised during the term hereby granted without any lawful interruption from or by the Lessor (meaning thereby the Lessor personally) or any person rightfully claiming from or under him.

Lessor's covenants for quiet enjoyment.

6. THE Lessor hereby also covenants with the Tenant that the Tenant may at any time within six months after the expiration or sooner determination of the said term remove and carry away and convert to his own use all the machinery and plant provided by him for the purposes of the works hereby authorised, and which the Lessor shall not have purchased under the power hereinbefore contained.

Lessee may remove plant not purchased by Lessor within six months from end of term.

7 to 9. (*Powers of distress and re-entry, and arbitration clause, as in Prec.* I *of this section, clauses* 14, 15, *pp.* 1129–30, *and* 19, *p.* 1131, *saying* "Tenant" *for* "*Tenants.*")

10. SECTION one hundred and ninety-six of the Law of Property Act, 1925, applies to all notices to be served hereunder.

Notices.

11. THE marginal notes hereto shall not affect the construction of this Lease.

Marginal notes.

IN WITNESS, &c. [*Add Schedule of parcels.*]

No. VII.

LEASE *of* STONE QUARRIES *and* CHALK *and* SAND PITS —COVENANT *by* LESSEE *to make a* ROAD, *&c.*(b) (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made (*date*), (*parties and definitions as in last Precedent, p.* 1166).

Parties.

(b) As to quarries over twenty feet deep, see the Quarries Act, 1894: *Gordon* v. *Anderson* [1910], S. C. (J.) 26.

The lord of a manor who owns the soil of the waste can quarry for stone, &c., so long as he does not materially affect commonable rights: *Malvern Hills Conservators* v. *Whitmore* (1909), 100 L. T. 841. This right is preserved

Mining rights over waste of the manor.

WITNESSETH, in consideration of the rents and royalties hereinafter reserved and of the covenants by the Tenant herein contained, and it is hereby declared as follows :—

Demise.

1. THE Lessor hereby demises unto the Tenant :

Parcels.

FIRST, ALL THOSE stone quarries and chalk pits in and under the pieces of land called —— and ——, situated in the Parish of ——, in the County of —— :

SECONDLY, ALL THAT sand pit situated and being at the north-west corner of the piece of land called ——, and situated in the parish aforesaid (which said quarries, chalk pits and sand pit are now in the occupation of the Tenant, and the said lands and certain other lands of the Lessor adjoining thereto are delineated on the plan hereto and thereon coloured pink) :

AND THIRDLY, THE rights and privileges hereinafter mentioned,

TO HOLD (except and reserved as hereinafter mentioned) unto the Tenant for the term of —— years from the —— day of ——, YIELDING AND PAYING therefor the rents and royalties hereinafter reserved and subject to the provisions hereinafter contained.

Liberty to work and get chalk, &c.

2. (1) THE Tenant shall and may at all times during the said term work and get from or out of the lands coloured pink on the said plan by means of the aforesaid quarries and pits so much chalk, firestone, hearthstone, burrstone and sand as he shall think fit :

Places out of which chalk, &c., to be got to be appointed by Lessor or by reference to arbitration.

(2) Provided that the precise places from or out of which the said chalk, sand and stone shall be gotten shall from time to time be set out for that purpose by the Lessor or his agent, with liberty, however, for the Tenant to object to any place so set out as not being suitable and convenient for the purposes aforesaid, and in such case the question whether or not the place objected to is suitable and convenient shall be settled by arbitration :

Proceedings if decision against the Lessor.

(3) If the decision shall be against the Lessor, he or his agent shall thereupon set out some other place for the purpose aforesaid and the Tenant shall have the like right of objecting thereto and of having the question settled by arbitration, and so on from time to time until the Lessor or his agent shall set out some place for the purpose aforesaid, to which the Tenant shall not object, or which, upon a reference to arbitration, shall be determined to be suitable and convenient for the purpose aforesaid.

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to him by L. P. Act, 1922, 12th Sch., para. (5), but the owner of enfranchised land has power to remove the soil so far as necessary for making roads or drains, erecting buildings or obtaining water : *ib.*

3. THE Tenant may, from time to time, during the said term—

(1) Lay, place and stack in or upon any convenient part of the said lands all or any of the chalk, lime, stone, sand and other produce to be gotten under the powers hereof, and all earth and rubbish which shall be gotten, thrown up or collected in carrying on the works hereby authorised:

Liberty to stack chalk, &c.

(2) Carry and convey all such chalk, lime, stone, sand and other produce, earth and rubbish as aforesaid, and all materials used in or about the said works over or along the said lands between the said quarries and pits and the public highway, by means of the road hereinafter covenanted to be made by the Tenant:

To convey chalk, &c., over road.

(3) Make, lay down and place on the said lands such railways and tramways with proper sidings and other conveniences as shall be necessary or convenient for carrying and conveying any such chalk, lime, stone, sand and other produce, earth, rubbish and materials as aforesaid between the said quarries and pits and the —— Railway, and may use the same railways, tramways and sidings for the purposes aforesaid:

To lay down railways, &c.

(4) Erect and set up on any convenient part of the said lands not more than —— cottages for the residence of his foreman and workmen employed in or about the said works, and so many sheds and buildings (including club-houses and other buildings for welfare work) as he may deem necessary or convenient for carrying on the works hereby authorised, and may use the sheds and buildings now standing on the said lands for the like purpose:

To erect cottages for residence of foreman and workmen, and to erect sheds, &c.

(5) Erect and set up on such parts of the said lands as the Lessor or his agent shall set out for the purpose (but not elsewhere) so many lime-kilns as the Tenant may think necessary or expedient for the purpose of converting the said chalk into lime:

To set up lime-kilns in places to be appointed by Lessor.

(6) Do all such acts and things, and use all such other devices and means for carrying on the works hereby authorised, as shall be found necessary or convenient according to the most approved practice in the district.

To do other things, &c., for carrying on works.

4. THE following liberties are hereby reserved to the Lessor (namely)—

(1) Liberty for the Lessor and all persons authorised by him (in common with the Tenant) to use the road hereinafter covenanted to be made by the Tenant either with or without horses and other animals, carts, motors, and carriages:

(2) Liberty for the Lessor and all persons authorised by him

Reservations to Lessor of liberty to use road, and to get chalk, &c., out of lands for use of his estate, but not from Lessee's pits.

to dig and get chalk, stone and sand from or out of any part of the lands coloured pink on the said plan for the use of the estate of the Lessor, but not for sale:

Provided that this liberty shall not enable the Lessor or any other person to dig or get chalk, stone or sand from the quarries or pits of the Tenant without his consent.

5. THE following rents and royalties are hereby reserved in respect of the premises hereby demised, and shall be paid by the Tenant [to the Lessor] (namely)—

Certain rent.

(1) The yearly rent of £—— to be paid during the whole of the term hereby granted by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such payments to be deemed to [have] become payable on the —— day of ——, 19—:

Royalty for stone.

(2) The royalty of sixpence for every ton of stone over and above 10,000 tons which shall or may be gotten from or out of the said lands under the authority of this Lease in any year of the said term after the —— day of ——, such royalty to be paid on the —— day of —— in every year, in respect of the stone gotten as aforesaid during the then preceding year, and to be in addition to the said yearly rent of £——:

Rent for every lime-kiln exceeding five.

(3) A yearly rent of £—— to be paid in respect of each and every lime-kiln exceeding five, which the Tenant shall erect or set up on the said lands for the purpose of converting the said chalk into lime, to be paid half-yearly, the first payment thereof to be made on the first of the half-yearly days which shall happen next after the Tenant shall have commenced erecting and building each and every such additional lime-kiln, and to be paid during the remainder of the said term.

Lessee's covenants.

6. THE Tenant hereby covenants with the Lessor in manner following, namely—

(1) (*To pay rent and royalties, as in clause* 12 (1) *of Prec.* I *of this Section, p.* 1124:)

(2) (*To pay rates, taxes, &c., as in clause* 12 (2) *of same Precedent, p.* 1124:)

To make a road.

(3) To forthwith commence and with all convenient speed prosecute and complete at his own cost in a good and workmanlike manner, and to the satisfaction of the Lessor or his agent, a hard and substantial road not less than fifteen feet wide from the said quarries and pits to —— Heath, the site and direction of the said road to be determined by the Lessor or his agent [on the site hatched brown on the plan hereto] and at all times

during the said term, at his own cost, to keep the said road in good and substantial repair and condition, and the same in such good repair and condition to deliver up to the Lessor at the end of the said term, and at all times during the said term to permit the Lessor and all persons authorised by him to use the said road, either with or without horses and other animals, carts, carriages, motors and other vehicles:

To keep account of all stone gotten.

(4) For the purpose of ascertaining the amount of royalty for stone payable under the said reservation, to keep after the —— day of —— proper and correct books of account, showing the amount of stone gotten from time to time under the authority of this lease, and previously to the —— day of —— in the year 19—, and in every subsequent year of the said term, to deliver to the Lessor or his agent a correct abstract of the said books of account for the then preceding year, and, if required, to verify the same by the statutory declaration of himself or his foreman: And to permit the Lessor and his agent at all reasonable times to inspect the said books of account and to take extracts therefrom:

To keep cottages, &c., in repair.

(5) At all times during the said term to keep all cottages, sheds, buildings, lime-kilns and other erections now standing, or which shall hereafter be erected upon the said lands under the authority hereof, in good and substantial repair and condition, and the same in such good and substantial repair to deliver up to the Lessor at the end of the said term:

To fence and guard the quarries, &c.(c)

(6) (i) At all times during the said term well and effectually to fence and guard the quarries, pits, railways, tramways and other ways now existing, or which shall at any time during the said term be made under the powers hereof, and to do as little damage or injury as possible to the surface of the said lands in the exercise of the liberties hereby granted;

(ii) To pay full compensation to the lessees or occupiers of the said lands for any damage or loss which may be sustained by them by reason of any horses, cattle, sheep or other animals falling into or getting on the said quarries, pits, railways, tramways or other ways, or otherwise by the neglect or default of of the Tenant or his agent, servants or workmen, the amount of such compensation to be settled by arbitration in case of difference:

To carry on works properly.

(7) Unless prevented by strikes, lock-outs or other unavoidable

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(c) See the Quarry (Fencing) Act, 1887.

causes, at all times during the said term to carry on the works hereby authorised in a proper and workmanlike manner, and after the best and most approved method of carrying on similar works in the neighbourhood:

Lessor may enter and inspect works.

(8) To permit the Lessor or his agent at all reasonable times during the said term to enter into and upon the quarries and pits of the Tenant and inspect the state and condition of the same and of the works therein, and if any of the said works shall be found to be carried on in an improper and unworkmanlike manner to rectify such improper working within ten days after notice thereof shall have been given in writing by the Lessor or his agent to the Tenant for that purpose:

(9) (*Tenant not to remove plant, as in* 4 (10) *last Precedent, p.* 1168 :)

(10) (*Power to purchase plant, as in* 4 (11) *last Precedent, p.* 1168 :)

(11) (*Not to assign, &c., without licence, as in* 4 (12), *last Precedent, p.* 1169 :)

7. (*Covenant for quiet enjoyment, as in* 5, *last Precedent, p.* 1169.)

8 to 13. (*As in* 6 *to* 11, *last Precedent, p.* 1169.)

IN WITNESS, &c.(*d*)

SECTION VI.

MISCELLANEOUS LEASES.

No. I.

LEASE *by a* TENANT *for* LIFE *or* STATUTORY OWNER *of land to the* FORESTRY COMMISSIONERS.(*e*) (*Legal Estate.*)

Parties to forestry lease.

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN A. B.,

Agreements for mining leases, boring agreements, &c.

(*d*) No precedent is given of an agreement to grant a mining lease, coupled with an agreement to bore or make trial pits, for these matters differ so much according to the circumstances of each case. As a rule, however, a form of mining lease is agreed and signed by the parties, and it is arranged that the lease shall be granted as soon as the mines have been proved. If this is not done the headings of the main provisions of the intended lease are set out in a schedule.

The principles are similar to those governing agreements (see *supra*) to grant building leases, but the conditions precedent to the grant of the lease vary in every case. Such contracts can be protected by the registration of a land charge: L. C. Act, 1925, s. 10, Class C (iv).

Contracts to sell minerals, the purchase money being payable by instalments.

In some cases it is more convenient to sell the minerals with some surface, the purchase-money being made payable by instalments. In such cases a mining lease at a peppercorn rent is granted, with a power to re-enter if default is made in payment of an instalment; by this means the purchaser can be safely let into possession.

Forestry leases by

(*e*) A tenant for life or statutory owner may grant a forestry lease for of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons for the time being entitled in reversion immediately expectant on the term hereby granted), of the one part, and the Forestry Commissioners (hereinafter called the Commissioners, which expression, where the context admits, includes the persons deriving title under them), of the other part:

WITNESSETH, in exercise of all statutory and other powers and in consideration of the rent hereinafter reserved and of the covenants by the Commissioners herein contained, and it is hereby declared as follows:—

Demise.

1. THE Lessor hereby demises unto the Commissioners:

Parcels.

FIRST, ALL THOSE pieces of land situated in the Parishes of —— and ——, in the County of ——, containing in the whole —— acres or thereabouts, and more particularly described in the First Schedule hereto and delineated on the plan hereto and thereon edged pink,

TOGETHER with all timber and other forest products now or at any time during the term hereby granted growing on the said lands or any part thereof;

Rights to cut and dispose of timber, &c.

SECONDLY, FULL and free right for the Commissioners at all times during the said term to cut, convert, carry away, sell, or otherwise dispose of the said timber and products and (subject

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fiduciary owners.

nine hundred and ninety-nine years: S. L. Act, 1925, s. 4 (iii); as to the meaning of "forestry lease": *ib.*, s. 117 (1) (x); for the regulations respecting forestry leases: *ib.*, s. 48. Trustees for sale (L. P. Act, 1925, s. 28) and personal representatives (Ad. of E. Act, 1925, s. 39) may exercise these powers; as to forestry leases generally, see the Forestry Act, 1919.

Practice of the Commissioners.

It is understood that the Commissioners, when dealing with an absolute owner, generally use a very simple form of lease, which, subject possibly to a reservation of sporting rights for a short period and a reservation of minerals, if so required, leaves the Commissioners masters of the situation, to clear the site of timber, and generally do what they think fit. The Commissioners supply the form, and will not usually allow the lessor to alter it. A fiduciary lessor is not in a position to submit to unrestricted dictation as to the terms to be imposed; he must consider whether or not the lease will benefit the trust, and what reservations, if any, such as rights of way, must be made for the protection of the land retained.

Fiduciary lessors.

Fixing the rent.

Under S. L. Act, 1925, s. 48, a peppercorn rent may be reserved for ten years; the rent may be made to vary according to the value of the "timber," which includes all forest products, or the produce which may be cut or disposed of, and a minimum rent may be reserved, with or without power for the Commissioners to make up shorts. Other provisions may be made for sharing proceeds or profits.

Counterpart.

A counterpart of this lease must be executed by the Forestry Commissioners and delivered to the lessor on the execution of this lease: S. L. Act, 1925, s. 42 (2).

only to the exceptions and reservations hereinafter mentioned) to commit all manner of waste in or upon the said lands, and with full power to plant or replant the said lands with trees and other forest products, to erect thereon cottages for woodmen and other buildings, including sawmills and tramways and other plant, and generally to use the said lands during the subsistence of the said term for any purpose (whether or not directly connected with forestry) which the Commissioners may think proper or convenient;

Right of way for haulage.

AND THIRDLY, FULL and free right for the Commissioners and the persons authorised by them (but in common with the Lessor and the persons authorised by him), with or without horses and other animals, waggons, lorries, engines, motors, and other vehicles, to pass and repass at all times during the said term over and along the private roadway coloured brown on the plan hereto for all purposes (including the hauling of timber and other goods), the Commissioners, nevertheless, making good from time to time, as required by the Lessor or his agent, any damage caused by the Commissioners to the said roadway or paying a proper proportion (having regard to user) of the costs of maintaining the same in reasonable repair, such proportion in case of difference to be settled by arbitration:

Exceptions and reservations.

EXCEPT AND RESERVED out of this demise unto the Lessor and the owners and occupiers from time to time of the lands adjoining on the —— sides of the premises hereby demised as mentioned in the Second Schedule hereto:

Habendum.

TO HOLD (except and reserved as aforesaid) unto the Commissioners for a term of [nine hundred and ninety-nine] years from the —— day of ——, 19—,

Reddendum.

Peppercorn rent and fixed rent.

YIELDING AND PAYING therefor [for the first ten years of the said term the yearly rent of one peppercorn, if demanded, and during the residue of the said term the yearly rent of £——, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of ——] [during the said term a variable yearly rent payable at the end of three months from the expiration of the current year of an amount equal to — per cent. of the net value of the timber and other forest products or the produce thereof attributable to the premises hereby demised, sold or otherwise disposed of (whether cut or standing) during

Rent variable according to produce disposed of in current year.(*f*)

(*f*) A variable rent will seldom be reserved as it involves the keeping of accounts to show what rent is payable.

the current year, after deducting the costs (if any) of cutting, hauling, lopping, sawing, making saleable, or otherwise dealing with the produce, and the costs (if any) of the auction or other sale in relation thereto] [during the said term—

[Minimum and variable rents.]

(i) A fixed or minimum rent of £——, payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of ——, 19—;

(ii) A variable yearly rent payable at the end of three months, &c. (*continue as in last alternative form*);

[Provision as to shorts.]

(iii) Provided that if in any year of the said term the variable rent aforesaid does not amount to the sum paid in respect of the said minimum yearly rent, then as often as the same shall happen the Commissioners may during the next [ten] years of the said term or any of them (but not afterwards) cut, convert, carry away, sell, or otherwise dispose of such a quantity of timber and other forest products, or the produce thereof, as shall be required to make up such deficiency without paying any rent for the same, other than the minimum yearly rent aforesaid;

[No set-off for past produce.]

(iv) The amounts received by the Commissioners in respect of the sale of timber, or other forest products, or the produce thereof, in any preceding year shall not, however, come in aid of or be applied to make up the deficiency in any subsequent year.]

Lessees' covenants—

2. THE Commissioners hereby covenant with the Lessor in manner following:—

To pay rents.

(1) To pay the rents hereby reserved at the times and in manner aforesaid:

To pay rates and taxes.

(2) (*To pay rates, &c., as in clause* 12 (2) *of Prec.* I, *Mining Leases, p.* 1124 :)

[To plant.(*g*)]

[(3) To plant with trees not less than —— acres of the land hereby demised in each year until the whole of the said land (not already planted) has been planted, and thereafter at all times to keep not less than —— acres of the said land fully planted with trees :]

[To employ foresters.(*g*)]

[(4) To appoint and employ at least one forester or woodman for every —— acres of the said land which may from time to time be planted :]

[To clear young trees.]

[(5) In the case of new plantations and until all young trees or saplings are firmly established, from time to time, as required, to clear or hook all growth round the same which would otherwise

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(*g*) Such a covenant will seldom be given.

prevent or damage the growth thereof, and to keep down, so far as practicable, or wire out ground game in young plantations :]

[To thin.(*g*)]

[(6) To thin out all plantations in accordance with the most approved method of forestry :]

To repair buildings.

(7) (*Add covenant to keep buildings in repair, if required, see Form No.* 24, *p.* 1032, *supra* :)

To insure buildings.

(8) (*Add covenant to insure buildings, if required, see Form No.* 22, *p.* 1031 :)

To repair fences.

(9) To repair and keep in good repair all boundary hedges, walls and fences on the said land :

To clear ditches and drains.

(10) To keep all ditches and the outfall of all drains on the said land clean and free from any obstruction to the intent that the drainage of any adjoining lands shall not be obstructed :

[To destroy vermin.(*g*)]

[(11) To destroy all rats, stoats, and other vermin on the said land :]

Power to view.

(12) To permit the Lessor or his agent at all reasonable times to enter on the said lands for the purpose of viewing the state of repair of all hedges, walls and fences, and the condition of all ditches and drains :

To remedy breaches of covenant.

(13) To remedy forthwith any defect arising from any breach of covenant by the Commissioners of which they have been given notice in writing by the Lessor ; And in case of default, after the expiration of ten days from the date of the said notice, to permit the Lessor or his agent, with or without workmen, at all reasonable times to enter on the said lands for the purpose of remedying the breach of covenant at the cost of the Commissioners :

To give notice of assignments, &c.

(14) To give notice forthwith in writing to the Lessor or his solicitors of all assignments and devolutions of the term hereby granted, or any part thereof, and of all underleases and other dealings or devolutions affecting the said term or any derivative term :

[To keep accounts.]

[(15) At all times during the said term to keep or cause to be kept correct and intelligible books of account upon such plan or principle as is generally adopted in such cases, which books shall contain accurate entries of the quantity of timber or other forest products, or the produce thereof, cut, converted, carried away, sold, or otherwise disposed of, with all particulars of dates and other facts necessary or proper for conveniently ascertaining the amount of the [variable] rent payable hereunder, and also at their own expense to furnish to the Lessor or his agent true

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(*g*) Such a covenant will seldom be given.

and correct copies of such accounts, whenever thereunto required, and, if required, to verify such copies by the statutory declaration of their agent: (*h*)]

(16) At the expiration or sooner determination of the term hereby granted to deliver up the said land, together with all buildings and fixtures thereon, in such good order, state and condition as the same ought to be in, having regard to the provisions herein contained. To yield up.

3. PROVIDED, that if the rents hereby reserved, or any of them, or any part thereof, respectively, shall be in arrear for thirty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall have been legally demanded or not), or if there shall be any breach of any of the covenants by the Commissioners herein contained, then and in any such case the Lessor may, at any time thereafter, enter into and upon the demised land, or any part thereof, in the name of the whole, and the same have again, repossess and enjoy as of his former estate. Proviso for re-entry.(*i*)

4. THE Lessor hereby covenants with the Commissioners that the Commissioners paying the rents hereby reserved and observing and performing the covenants and conditions herein contained and on their part to be observed and performed, shall and may peaceably and quietly possess and enjoy the premises hereby demised during the said term without any lawful interruption from or by the Lessor (meaning the Lessor personally) or any person rightfully claiming from or under him. Lessor's covenant.

[5. IF any difference shall arise between the Lessor and the Commissioners as to any matter which under this Lease is to be submitted to arbitration, then and in every such case the difference shall be referred to a [single arbitrator] arbitration under the Arbitration Act, 1889.] [Arbitration clause.]

6. The marginal notes hereto shall not affect the construction. Marginal notes.

IN WITNESS, &c.

THE FIRST SCHEDULE.

No. on Plan.	Description.	Acreage.

(*h*) This clause will only be required where the rent is ascertainable or varies according to the value of forest products sold or otherwise disposed of.

(*i*) This is essential to the validity of the lease: S. L. Act, 1925. s. 42.

THE SECOND SCHEDULE.

Exceptions and Reservations.

(*Set out exceptions of minerals, reservations of rights to work, reservations of rights of way or of rights to build on or use adjoining land, of sporting rights, or otherwise, as the case requires.*)

No. II.

LEASE *of a* CEMENT FACTORY. (*Legal Estate.*)(*j*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part: WITNESSETH, in consideration of the rents and royalties hereinafter reserved, and of the covenants by the Tenant herein contained, and it is hereby declared as follows:—

Demise.

1. THE Lessor hereby demises unto the Tenant:

Parcels. Engine house.

FIRST, ALL THAT building chiefly used as an engine house, situated in and fronting —— Street, in the City of ——, which premises are more particularly delineated on the plan hereto and thereon coloured blue:

Use of machinery, &c.

TOGETHER with the use and enjoyment of all the machinery, fixtures, implements, utensils and things which are now in or upon the premises;

Manufactories, &c.

AND SECONDLY, ALL AND SINGULAR the factories, boiler houses, kilns, erections, offices, buildings and premises, situated between —— Street and —— Quay, in the said City, which premises secondly hereinbefore described are more particularly delineated on the said plan, and thereon coloured red:

TOGETHER with the use and enjoyment of all the machinery, fixtures, implements, utensils and things which now are in or upon the premises secondly hereinbefore described:

Reservation of upper storey and right of passage.(*k*)

[EXCEPT nevertheless and reserving unto the Lessor and the other persons in whose favour the same have, previously to the date hereof, been granted, excepted or reserved—

(*j*) If the lease is not made by an absolute owner (free from family charges) or the title to the land is registered, see the Forms in Pt. I, pp. 1014, *et seq.*, and notes thereto.

(*k*) As to reservations of easements: L. P. Act, 1925, s. 65.

(i) All the rooms which form the upper storey of the several buildings hereby demised, and the absolute use and enjoyment thereof, whether for the purpose of business or otherwise howsoever;

(ii) Full and free right for them and the persons authorised by them, either on foot, or by means of carts, motors or other vehicles, horses or other animals, to pass and repass at all times over the piece of land coloured brown on the said plan from the point at which the said piece of land adjoins the said Quay, and by all the other internal and external passages and ways by which the said rooms respectively are or can be now approached from the said Street from the point aforesaid],

Habendum.

To HOLD [(except and reserved as aforesaid)] unto the Tenant for the term of —— years from the —— day of ——, 19—,

Reddendum of rent and royalties.

YIELDING AND PAYING during the said term—

(i) A clear yearly rent of £——;

(ii) In addition to the said rent, a royalty of —— per bushel in respect of all cements which shall be made or manufactured and sold by the Tenant, or by any person on his behalf either on the premises hereby demised, or in any other place:

Such rent and royalties to be paid by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first quarterly payment of the said rent and royalties to be made on the —— day of —— next.

Covenants by Lessee—

2. THE Tenant hereby covenants with the Lessor in manner following, namely—

To pay rents, &c.

(1) To pay the rents and royalties hereby reserved at the time and in manner aforesaid, and to observe and perform the provisions herein contained:

To pay rates and taxes.

(2) (*To pay rates, &c., as in* 12 (2) *of Prec.* I *of last Section, p.* 1124:)

To carry on business of making and selling cements during the term.

(3) At all times during the said term to carry on within the said City of —— the business of making or manufacturing cements, and selling the same there and elsewhere to the best possible advantage:

To keep books of account.

(4) To keep proper books of account on the premises or on some part thereof, and to make such entries therein as will clearly show the quantity of cement which shall from time to time be manufactured and sold by the Tenant or any person on his behalf, and the amount of royalties which shall from time to time

become payable in respect thereof, and also all other matters which ought to be entered in such books in relation to the said business:

To supply accounts.

(5) On the first day of every month during the said term to supply, at his own expense, the Lessor with a proper and faithful account in writing of all the cements which shall have been manufactured and sold as aforesaid during the then preceding month, together with all vouchers and such other evidence as may be required in order clearly to show the accuracy of such account, and if and when required so to do by the Lessor, to further verify every such account by a statutory declaration by the Tenant or his manager:

To comply with Factory Acts.

(6) In all respects to comply with the provisions of the Factory Acts, 1901 and 1907, and any other obligations imposed by law in regard to carrying on the said business:

To insure buildings and stock-in-trade.

(7) (i) At all times during the said term to insure and keep insured all the buildings, cements, stock-in-trade, fittings and machinery which shall for the time being be upon the premises, or any other such premises as aforesaid, or which otherwise may be engaged or employed in the said business, in some insurance office or underwriters approved by the Lessor, and to produce, when required, the receipts for premiums and policies;

(ii) And in the event of any such buildings, cements or stock-in-trade, fittings or machinery being destroyed by fire, to lay out the money which shall arise by reason of the insurance thereof in rebuilding or in replacing all such cements, stock-in-trade, fittings and machinery as may be so destroyed, and to make good any deficiency out of his own money:

To keep and deliver up in repair.

(8) At all times during the said term to keep in good and substantial repair and condition all and singular the buildings and machinery, utensils, implements and things hereby demised, and all other the erections and buildings which shall at any time during this demise be erected or set up upon the premises; and the same in such good and substantial repair, at the expiration or sooner determination of the said term, to surrender up peaceably and quietly to the Lessor (reasonable wear and tear thereof in the meantime only excepted):

Power for Lessor to view.

(9) To permit the Lessor or his agent, with or without workmen and others, at any time during the said term to enter into and upon the premises, or any part thereof, to view and examine the state and condition thereof, and to repair and make good all defects or wants of reparation which shall be found upon such view, within one month after a notice in writing to that

effect shall have been given to the Tenant, or left for him on the premises.

3. PROVIDED, that if the rent and royalties hereby reserved, or any of them, or any part thereof respectively, shall at any time during the said term fail to be paid at the times and in the manner hereinbefore provided for this purpose, then (in addition to the powers of distress and entry which he may possess independently of any special clause to this effect) the Lessor may, into or upon the premises hereby demised, or any part thereof, or any other premises wherein or whereupon the said business may for the time being be carried on, enter and distrain for the same rent and royalties so in arrear, and the distresses there found impound, detain, sell and dispose of in such manner as landlords are by law authorised to do in respect of arrears of rent reserved upon a common demise, to the intent that the Lessor may by such distresses be from time to time satisfied in respect of all such rent and royalties as may be so unpaid as aforesaid, and all costs and expenses occasioned by non-payment thereof.

Power of distress.

4. (*Covenant for quiet enjoyment, as in* 5, *Prec.* VI *of last Section, p.* 1169.)

5. (*Power of re-entry, as in* 15, *Prec.* I *of last Section, p.* 1130.)

6. (*As to notices, as in* 10, *Prec.* VI *of last Section, p.* 1169.)

IN WITNESS, &c.

No. III.

LEASE *for* 2,000 *years for giving effect to a* CONTRACT *made* [*before* 1926] *for the* GRANT *of a* NEW PERPETUALLY RENEWABLE LEASE.(*l*) (*Legal Estate.*)

THIS LEASE [UNDERLEASE], made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and the —— Company, Limited, whose registered

Parties

(*l*) Under L. P. Act, 1922, 15th Sch., para. 6, such a contract operates as an agreement to grant a lease for 2,000 years, or an underlease for a term less by one day than the term out of which it is to be derived. The amount of rent stated in the contract, when made before 1926, will be adjusted, having regard to the fines and other payments (if any) which would have been made on subsequent renewals. This can be worked out from Archer's Tables on say a 5 per cent. discount basis. If the parties disagree as to the amount which ought to be added to the rent, the dispute must be submitted to the Minister of Agriculture: *ib.*

Effect of contract.

A contract made after 1925 to grant a perpetually renewable lease operates as an agreement to demise for 2,000 years or to grant a sub-term; in this case the rent is not adjustable: *ib.*, para. 7.

office is at —— (hereinafter called the Company, which expression where the context admits, includes the persons deriving title under them), of the other part:

WITNESSETH, [in exercise of all statutory and other powers and] for giving effect to a Contract made before the 1st January, 1926, for the grant of a new perpetually renewable lease of the property hereinafter described, and in consideration of the rent hereinafter reserved and of the covenants by the Company herein contained, and of the fine or sum of £—— now paid by the Company to the Lessor (the receipt of which sum the Lessor hereby acknowledges), and it is hereby declared as follows:—

Demise.

1. THE Lessor hereby demises unto the Company:

Parcels.

ALL, &c. (*see Forms in Sect.* II, *Conv. on Sale, Vol.* I, *pp.* 471 *et seq.*),

Habendum.

TO HOLD unto the Company from the —— day of ——, 1925, for a term of two thousand years:

Reddendum.

YIELDING AND PAYING therefor during the said term the yearly rent of £—— by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of——, and the —— day of —— in every year, the first of such quarterly payments to be deemed to have become due on the —— day of ——.

Lessee's covenants.

2. (1), &c. (*Covenants by Company to pay rent, rates and taxes during the said term—to keep in repair—to permit Lessor to inspect—to insure, &c., in accordance with the contract. The following covenant, cf. L. P. Act*, 1922, 15*th Sch., para.* 10 (1) (ii), *should generally be inserted, and the lease and counterpart should be filed at the Central Office and office copies taken; ib., para.* 20: "To register every assignment (including an assent) or devolution of the term hereby granted, including all probates and letters of administration affecting that term, with the Lessor or his solicitors or agents within six months from the date of the assignment,

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Powers to grant renewable leases.

A power to grant perpetually renewable leases is to have effect as if it authorised the grant of a lease or underlease for a term not exceeding 2,000 years at the best rent that can be obtained, having regard to any fine, &c., taken; or the power may authorise less than the best rent to be accepted: *ib.*, para. 8 (1).

Fine.

If the lease is granted by a tenant for life, trustees for sale or personal representatives, any fine taken must be treated as capital: S. L. Act, 1925, ss. 42 (4), 81, 108, 109; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

If a fine is taken and the lease is granted by a tenant for life a receipt therefor by the S. L. Act trustees can be endorsed on the lease.

As to leases not granted by an absolute owner (free from family charges) or where the title is registered, see Forms in Pt. I, pp. 1014, *et seq.*, *supra*, and notes thereto.

devolution or grant of probate or letters of administration, and to pay a fee of one guinea (which shall be accepted in satisfaction of all costs) in respect of each registration "(m)) :

Contract made after 1925.

[*Add covenant by Lessor for quiet enjoyment, proviso for re-entry and other general provisions according to the contract. This Precedent can be adapted to the case where, after* 1925, *a contract for a perpetually renewable lease is expressed to be made, for this operates as an agreement to grant a lease for* 2,000 *years, or an underlease for the residue of the head term less one day : L. P. Act,* 1922, 15*th Sch., para.* 7 (1).]

In witness, &c.

No. IV.

LEASE *of* Sporting Rights *for a term of years determinable by notice after the death of the* Lessee.(n) (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), Between A. B., of, &c. (hereinafter called the Lessor, which expression, where

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(*m*) As to the practice in the case of registered land: L. R. R., 1925, r. 91.

Impossibility.

Where an option to renew a lease on the agreed terms becomes impossible of performance, the lessor would not, apart from statute, be bound to grant any lease: *Hollies Stores* v. *Timmis* [1921], 2 Ch. 202; 90 L. J. Ch. 485; *cf.* L. P. Act, 1925, s. 152.

Conversion into long terms.

No question as to granting a lease arises where a perpetually renewable lease or underlease was subsisting on 1st January, 1926, for such leases are by the Act converted into non-renewable long terms: L. P. Act, 1922, 15th Sch., paras. 1 and 2; see generally on this Schedule: 1 Wolst. & Cherry, 11th ed., 89–106.

Powers to grant leases for lives.

Powers to grant leases for lives, &c., at a rent or in consideration of a fine (not perpetually renewable) take effect as powers to grant leases for a term not exceeding ninety years terminable by notice on either side after the death, &c.: L. P. Act, 1922, 15th Sch., para. 8 (2).

Effect of attempt to create lease for lives.

Leases for lives, &c., at a rent or for a fine, are converted into similar terms for ninety years, whenever made: L. P. Act, 1925, s. 149 (6).

Covenant to renew; limit.

A covenant or contract to renew a lease for a term exceeding sixty years from the termination of an existing lease is void: L. P. Act, 1922, 15th Sch., para. 7 (2). So is a contract to grant a term to take effect in possession *after* twenty-one years: L. P. Act, 1925, s. 149 (3).

Mode of, in effect granting a lease for life.

As a purported lease for life would operate to create a term of ninety years terminable by notice on either side: L. P. Act, 1925, s. 149 (6), where, after 1925, it is desired to grant a lease for a life, a lease for a long term, say, fifty (S. L. Act, 1925, s. 41) or ninety years should be granted with a power for the lessor or the representatives of the lessee to determine the lease by notice after the death. This creates a legal estate as being a term of years absolute: L. P. Act, 1925, s. 205 (1).

Sporting rights.

(*n*) A grant of the right of hunting, shooting, fishing, and sporting over property extends to all things which are ordinarily considered the subject of sport: *Jeffryes* v. *Evans* (1865), 19 C. B. (N.S.) 246; 34 L. J. C. P. 261. In the case of a sporting tenancy the term generally commences on 2nd February.

Grant should be under seal.

A grant of sporting rights should be under seal: *Wood* v. *Leadbitter* (1845), 13 M. & W. at p. 842; *Bird* v. *Higginson* (1837), 6 A. & E. 824; 6 L. J. Ex. 282; but *cf. Radcliffe* v. *Hayes* [1907], 1 Ir. R. 101. If the tenant, however, the context admits, includes the persons deriving title under him, of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part: WITNESSETH, in consideration of the rent hereinafter reserved and of the covenants by the Tenant herein contained, and it is hereby declared as follows:—

Demise of right of sporting.

1. THE Lessor hereby demises unto the Tenant:

ALL THAT, the exclusive right of [hunting,] coursing, shooting, fishing,(o) and sporting in, over and upon:

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has enjoyed the right, he cannot, in an action for breach of covenant, set up as a defence the fact that the lease was by writing only: *Adams* v. *Clutterbuck* (1883), 10 Q. B. D. 403; 52 L. J. Q. B. 607.

Legal estate.

Though L. P. Act, 1925, s. 187 (1), shows that, as a general rule, an easement, right or privilege should be annexed to land if a legal estate is to be created, it does no more than provide that, when created, it shall enure for the benefit of some land if that is the intention. It does not rule out the possibility of creating a legal profit *à prendre* not annexed to land, nor does it rule out legal rights created by statute.

Reservation acts as a re-grant.

The reservation of a right of sporting in a conveyance of land operated as a re-grant: *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; after 1925 a simple reservation will create a legal estate in the rights reserved, it is not necessary that the grantee should execute: L. P. Act, 1925, s. 65.

How a lease of sporting rights affects the lessor's interests in the land.

A grant of sporting rights does not affect the lessor's right to let plots for building purposes: *Pattisson* v. *Gilford* (1874), L. R. 18 Eq. 259; 43 L. J. Ch. 524; but this would not prejudice the sporting tenant's right to claim damages against the landlord for interference with his right: *ib.*, 18 Eq., at p. 263. A tenant of sporting rights may do anything reasonable on the land for their preservation, even though his acts might constitute a trespass: *Cope* v. *Sharpe* [1912], 1 K. B. 496; 81 L. J. K. B. 346.

Covenant to preserve game runs with the land.

A covenant to preserve game runs with the land, and by virtue of L. P. Act, 1925, s. 141, the assignees of the reversion can sue upon it: *Hooper* v. *Clark* (1867), L. R. 2 Q. B. 200; 36 L. J. Q. B. 79.

Reasonable notice to determine sufficient.

The rule which requires a six months' notice to quit in a yearly tenancy of corporeal property does not apply to a yearly tenancy of sporting rights, a "reasonable notice" being only necessary: *Lowe* v. *Adams* [1901], 2 Ch. 598; 70 L. J. Ch. 783.

Covenants by lessees of fishings.

(o) In the case of trout fishing a covenant is often inserted prescribing the method of fishing, *e.g.*, by dry fly only:—

Salmon rivers.

In the case of salmon rivers (as to which see Oke's Fishery Laws, and the Salmon and Freshwater Fisheries Act, 1923) the following covenants should be inserted:—

(1) In all respects to observe the bye-laws of the Board of Conservators of the said River:

(2) To keep a correct record of the number of fish caught, and to furnish a copy thereof to the Lessor at the end of each season:

(3) To use his best endeavours to protect the River from poaching and to keep and pay the wages of a keeper or water bailiff:

All, &c., which properties are more particularly delineated on the plan hereto and thereon edged green :

AND ALSO ALL THAT the keeper's lodge situated at —— aforesaid, now in the occupation of —— :

[Reservation.]

[EXCEPT AND RESERVED out of this demise unto the Lessor, the exclusive right of shooting and sporting in, over and upon the lands coloured red on the said plan, and the exclusive right of fishing in the River A., between the points marked C. and D. on the said plan],

Habendum.

TO HOLD unto the Tenant for a term of —— years from the 2nd day of February 19— (determinable by notice as hereinafter provided), but subject as regards ground game to the rights of the tenants of the said lands or any of them under the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906 :

Reddendum.

YIELDING AND PAYING therefor the yearly rent of £—— by equal half-yearly payments on the 2nd day of August and the 2nd day of February in every year, the first payment to be made in advance on the 2nd day of February next (*the commencement of the term*), the last payment of rent to be made three months before the expiration or sooner determination of the said term.

Covenants by Lessee :—

2. THE Tenant hereby covenants with the Lessor in manner following (that is to say) :—

To pay rent and taxes in respect of keeper's lodge.

(1) To pay the said rent at the times and in manner aforesaid, and to pay all rates and taxes payable in respect of the said keeper's lodge and all rates and taxes (including sporting and fishery rates) payable in respect of the rights hereby demised :

To keep a gamekeeper.

(2) During the said term, at his own cost, to keep at least one effective gamekeeper who shall have the supervision of and preserve the game upon the said properties, and who shall live in the said keeper's lodge :

To preserve game and eggs and foxes.

(3) At all times during the said term to keep up the head of game on the said properties [and not to kill any hen pheasants after the month of December in any year, or trap any pheasants except for the purpose of stocking the breeding pens used in connexion with the estate or for purposes of exchange for other hens] and, so far as practicable, to preserve the eggs and young of game birds from being destroyed or injured (*p*) [and to pay to a labourers' fund the sum of 1*s*. for

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(4) (*Also, if desired, but on many rivers all baits are allowed*) To fish or to permit persons to fish with fly only.

(*p*) If the lease is only for a short period, it is sometimes desirable for the landlord to limit the amount of game to be shot annually. Sometimes the every partridge's nest duly hatched off on the said properties] [and also to preserve foxes and permit hunting]:

Indemnity for game damage.

(4) From time to time to keep the Lessor indemnified against all claims for compensation in respect of damage by game under the provisions of the Agricultural Holdings Act, 1923 :

Head of game to be preserved.

(5) At the expiration or sooner determination of the term hereby granted to leave a sufficient head of game upon the premises and (so far as practicable) not less than the head of game thereon at the commencement of the said term :

Exercise of rights.

(6) To exercise the said rights in a proper and sportsmanlike manner and to keep down rats, jays, magpies, crows, stoats and other vermin.

Not to assign or underlet without licence of Lessor.

(7) Not at any time to assign or underlet, or otherwise part with the rights and privileges hereby demised, or any of them, to any persons whomsoever, without the previous consent in writing of the Lessor.

3. The Lessor hereby covenants with the Tenant—

Covenant by Lessor for quiet enjoyment.(*pp*)

(1) That the Tenant paying the yearly rent hereby reserved, and observing and performing the covenants on his part herein contained, shall and may peaceably and quietly have, hold and enjoy the rights and privileges hereby demised without any lawful interruption from or by the Lessor (meaning thereby the Lessor personally), or any persons claiming through, under or in trust for him :

To allow expenses of preserving from end of preceding season.

(2) That if this Lease shall be determined out of the shooting season and during the said term, the Lessor shall pay or allow to the Tenant all expenses incurred by him in preserving and rearing the game from the end of the preceding season up to the date of

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tenant is made to keep down rabbits. On some estates the tenant is made to use the Euston system for keeping up the stock of partridges.

Provision for reduction in rent if lessor affects shooting rights by cutting timber.

(*pp*) As extensive cutting of timber affects pheasant shooting, the following provision may be added if required :—

If the Lessor shall during the said term cut any timber or undergrowth in any of the woods hereby demised in such manner that the rights hereby demised shall be prejudicially affected, then and in such case the Lessor shall, during so much of the said term as the rights hereby granted shall be so affected, allow to the Tenant a reduction in the rent hereby reserved, such reduction in case of difference to be settled by arbitration under the provisions of the Arbitration Act, 1889.

Timber.

A grant of sporting rights does not prevent the lessor from cutting timber in the ordinary course of management : *Gearns* v. *Baker* (1875), L. R. 10 Ch. 356 ; 44 L. J. Ch. 334 ; *Dick* v. *Norton*, 85 L. J. Ch. 623.

cesser of the said term, such expenditure to be proved to the reasonable satisfaction of the Lessor's agent.

4. (*Power of re-entry for non-payment of rent or breach of covenants, as in Clause* 3, *Prec.* I, *Sect.* II, "*Houses*," *p.* 1047.)

Power to give notice to determine after death of tenant.

5. (1) At any time after the death of the Tenant (meaning thereby the Tenant personally) either the Lessor on the one hand or the representatives or other persons deriving title under the Tenant on the other hand may, by notice in writing given to the other of them at least one month before the next succeeding 2nd day of February, declare that the said term shall terminate at the end of that day, and the said term shall determine accordingly, but without prejudice to all rights and remedies in respect of any antecedent breach of covenant and subject to all rent being paid in advance by the representatives or other persons deriving title under the Tenant at the time of the notice, if that notice is served by them:

(2) Section one hundred and ninety-six of the Law of Property Act, 1925, applies to all notices to be served hereunder.

In witness, &c.

No. V.

LEASE *of* Land *for the purposes of a* Golf Course *and* Rights *over an intersecting* Private Road. (*Legal Estate.*)

Parties.

THIS LEASE [UNDERLEASE], made (*date*), Between A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and The —— Golf Links Limited, whose registered office is at —— (hereinafter called the Tenants, which expression, where the context admits, includes the persons deriving title under them), of the other part:

WITNESSETH, in consideration of the rent hereinafter reserved and of the covenants by the Tenants herein contained, and it is hereby declared as follows:—

Demise of land and right over road.

1. The Lessor hereby demises unto the Tenants:

Parcels.

First, All those, &c., Together with the mansion house, known as ——, erected on part thereof, Together with power forthwith to make all such alterations to the said mansion house as may be required to convert the same into a Golf Club House, and to erect any further buildings on the said land which may be required for the purposes of a ladies' club house, professionals' shop, caddies' shed, shelters or otherwise, but subject to the covenants hereinafter contained; and with power to excavate bunkers, and dig for and use any land (including sand and turf) which may be required in connexion with bunkers, tees and putting greens: [And with power to use the water in the lake on the premises for the purpose of watering the greens and tees, and to lay pipes and erect such engines, turbines, dams and works for distributing and pumping the said water as may be approved by the Lessor or his surveyor]:

AND SECONDLY, FULL right for the Tenants and the persons authorised by them to drive balls over and to cross and to recross the road coloured brown on the plan hereto for all such purposes as may be required in connexion with the user of the premises hereby demised as a Golf Course, and for putting and keeping the Course in proper repair and condition:

PROVIDED as follows—

(i) The Tenants shall be bound, at their own cost, to pay compensation to any person injured, and to make good any damage to the said road and the fences on either side thereof which may occur in connexion with the exercise of the rights aforesaid;

(ii) The said rights shall not prejudice or affect the right of the Lessor to arrange for the said road to be taken over by the local authority;

(iii) The Tenants shall keep the Lessor fully indemnified from all claims and demands by any person in respect of any injury, damage or otherwise in connexion with the exercise of the said rights:

Reservations

EXCEPT AND RESERVED out of this demise unto the Lessor:

The road.

FIRST, ALL THAT the said road with the right to use the same for all purposes;

Timber.

SECONDLY, ALL trees and timber growing on the premises hereby demised, with power to fell, lop and carry the same away, but making good forthwith all damage caused thereby;

Minerals.

THIRDLY, ALL mines and minerals (if any) within or under the premises hereby demised, with full power to work the same by underground workings only (with or without leaving any subjacent or lateral support for the surface or any buildings erected or to be erected thereon), but without prejudice to the right of the Tenants to excavate bunkers or to dig and use land (including sand and turf) for the purposes of bunkers, tees, and putting greens or otherwise as a Golf Course ;

Right to erect buildings on adjoining land.

AND FOURTHLY, FULL power to erect any buildings on any adjoining land or otherwise develop the same as a building estate or otherwise, notwithstanding that the access of light and air to the premises hereby demised may be thereby prejudicially affected :

Habendum.(q)

TO HOLD (except and reserved as aforesaid) unto the Tenants for a term of —— years from the —— day of ——, 19—,

YIELDING AND PAYING, &c. (*adapt from last Precedent*).

Covenants by Tenants.

2. THE Tenants hereby jointly and severally covenant with the Lessor in manner following (that is to say) :—

Rent, rates and taxes.

(1) and (2) (*To pay rent, rates and taxes, Form No.* 21, *p.* 1029, *supra*) :

To submit plans.

(3) To submit plans and specifications for all such alterations and new buildings of a permanent nature as are hereinbefore authorised to be made or erected, before the same are commenced, for the approval of the architect or surveyor for the time being of the Lessor, and to carry out the works in all respects in accordance with his reasonable requirements, and to pay all the fees and charges of such architect or surveyor in connexion with the matters aforesaid, and not to make any structural alterations or additions unless and until the same have been authorised as aforesaid :

To repair.(r)

(4) During the said term to keep the said mansion house, stables, garage and other buildings (including all fixtures and additions thereto) from time to time erected on the premises hereby demised (other than temporary structures) in good repair and condition (but as respects existing buildings, having regard to their present state of repair), and the same in such repair and condition to deliver up to the Lessor at the expiration or sooner determination of the said term, and to tar or paint with two coats at least of good oil colour and in proper and workmanlike manner all the wood, iron, and other work in and about the outside of the premises usually tarred or painted in every fourth year of the term hereby granted :

To fence, &c.

(5) To fence in to the reasonable satisfaction of the Lessor's

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Leases by fiduciary owners.

(q) Land for a golf course may now be demised by a fiduciary owner for a term of fifty years : S. L. Act, 1925, s. 41 (iv) ; L. P. Act, 1925, s. 28 ; Ad. of E. Act, 1925, s. 39.

Covenants as to things not *in esse*.

(r) As to covenants to do an act relative to subject-matter not in existence at the time of the covenant : L. P. Act, 1925, s. 79.

surveyor all such boundaries of the premises hereby demised as are not at present efficiently fenced in and during the term hereby granted to keep all existing boundary fences and any such new fences as aforesaid with all gates therein in proper order and condition, so as to keep the cattle, sheep and other animals of the occupiers of any adjoining lands from breaking into the premises hereby demised :

Provided that as regards any fences (not being boundary fences), trees or timber which the Tenants may (for the purpose of converting the premises into a Golf Course) require to remove, such removal shall only be made with the consent of the Lessor or his surveyor (such consent not to be unreasonably withheld), and the trees and timber so removed shall be the property of the Lessor and shall be dealt with in such manner as the Lessor or his surveyor may reasonably require :

To lay out as a Golf Course, &c.

(6) To lay out the premises, as soon as practicable, as a Golf Course with proper greens, bunkers, tees and other requisites of a first-class links, and during the said term to keep down the herbage by means of sheep or mowers or both,(s) and to keep the greens, tees and fairway in proper order and condition for good play :

To drain, &c.

(7) If and when such Course is laid out, at their own expense, to put in and maintain in proper order and condition all drains necessary or proper for draining the Course [into the lake on the property hereby demised, and not more than necessary to alter the shape, size, position or depth of the said lake : (t)]

To restore surface.

(8) At the end or sooner determination of the said term at their expense, if so required by the Lessor, to restore the surface level and turf all bunkers so as to leave the premises in a proper condition as pasture land :

Removal of weeds, &c.

(9) During the said term to keep down so far as practicable all thistles, docks, plantains, nettles and other noxious weeds, and in particular in regard to the putting greens and tees from time to time either to treat the weeds thereon with sulphate of ammonia or hand-weed the same as occasion may require [and

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Lease of farm subject to lease to golf club.

(s) Where a farm was demised subject to a lease to a golf club who were entitled to cut "long grass" it was held that the club could cut grass short on the course : *Woodward* v. *Heywood* (1910), 27 T. L. R. 123.

Laying on water under an improvement loan.

(t) The Minister of Agriculture will generally authorise a loan by the Lands Improvement Company for laying on water to a golf course. And see S. L. Act, 1925, s. 71 (1) (ii), authorising money required for improvements to be raised on mortgage.

also to keep down the worms on the putting greens by the use of perchloride of mercury, permanganate of potash, or other chemical preparations]:

Not to affect user of road.

(10) Not to permit anything to be done to prejudice or affect the user of the said road coloured brown on the plan hereto by the Lessor or his lessees or other persons authorised by him:

Playing over road.

(11) (i) From time to time to make such regulations with respect to the playing of balls over or out of the said road as may be required to secure the safety of all persons, animals and vehicles passing over or along that road and to prevent any damage being done to the fences on either side thereof;

(ii) To keep indemnified the Lessor and all other persons prejudicially affected from all proceedings, costs, claims and demands on account of any injury or damage caused by play in or near the said road:

Gates, &c.

(12) If the Tenants require the erection of any gates or other means of access from any part of the premises to any other part, to provide and maintain all such gates and conveniences at their expense, and in the erection and maintenance thereof in all respects to comply with the reasonable requirements of the surveyor for the time being of the Lessor:

Permit Lessor to enter.

(13) To permit the Lessor or his surveyor at all convenient times to enter on the premises and examine the state and condition thereof, and to repair or otherwise make good any defect or breach of covenant, of which notice shall be given within, if practicable, three months after the giving of such notice:

As to trade or business.

(14) Not to allow any trade or business to be carried on upon the premises, except such trades or businesses (including those of a Golf Club House and a maker of golf accessories) as are usually incidental to a golf club, and to conduct, or require to be conducted, every such authorised trade or business in a proper and orderly manner:

Insurance.

(15) (*To insure all buildings, as in Form No.* 22, *p.* 1031, *supra*:)

Not to assign.

(16) (*Not to assign without consent, as in Form No.* 23, *p.* 1032, *supra*:)

Proviso for re-entry.

3. (*Proviso for re-entry, as in clause* 3 *of Prec.* I, *Sect.* II, "*Houses,*" *p.* 1047, *supra*:)

Quiet enjoyment.

4. (*Covenant for quiet enjoyment, as in Form No.* 25, *p.* 1032, *supra*:)

In witness, &c.

No. VI.

UNDERLEASE *of a* PART *of the* PROPERTY *comprised in the* ORIGINAL LEASE; COVENANTS *by* LESSOR *in the event of his* PURCHASING REVERSION *in* FEE SIMPLE, *or obtaining a* RENEWED LEASE, *to* SELL *such* REVERSION [*or to grant* ONE RENEWED LEASE *to the* SUB-LESSEE]. (*Legal Estate.*)(*u*)

Parties.

THIS UNDERLEASE, made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons for the time being entitled in reversion immediately expectant upon the term hereby granted), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part: WITNESSETH, in consideration of the premium of £—— now paid by the Tenant to the Lessor (the receipt of which sum the Lessor hereby acknowledges) and of the rent hereinafter reserved and the covenants by the Tenant herein contained, and it is hereby declared as follows:—

Sub-demise.

1. THE Lessor hereby demises unto the Tenant:

Parcels.

ALL THAT piece of land (*describe the land to be underlet*),

Habendum.

TO HOLD unto the Tenant for a term of —— years from the —— day of ——, 19—, less — days,

YIELDING AND PAYING therefor, &c.

Covenants by sub-lessee.

2. THE Tenant hereby covenants with the Lessor in manner following (namely)—

Limit to covenants to renew.

(*u*) A covenant to renew a lease or underlease for a term not exceeding sixty years from the termination of the lease or underlease is still valid: L. P. Act, 1922, 15th Sch., para. 7 (2), provided that the new lease is to take effect in possession within twenty-one years: L. P. Act, 1925, s. 149 (3).

Renewals by fiduciary owners.

Fiduciary owners can grant leases or underleases for giving effect to a valid covenant for renewal: S. L. Act, 1925, s. 43 (i); L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

Fines.

If the lease is granted by a tenant for life at a fine, it must be paid to the S. L. Act trustees, and they should sign a receipt endorsed on the lease: S. L. Act, 1925, s. 43 (4).

Grants of options to purchase by fiduciary owners.

Fiduciary owners can grant options to purchase or take leases at a price or rent fixed at the time of granting the option; the option must be made exercisable within ten years; the price or rent may be made ascertainable in various ways: S. L. Act, 1925, s. 51; L. P. Act, 1925 s. 28; Ad. of E. Act, 1925, s. 39.

Title to be shown.

Where the intending lessor is a leaseholder, the intending underlessee can call for the lease and the dealings therewith: L. P. Act, 1925, s. 44 (2) and (4).

Land charge.

An option to purchase or to take a lease may be protected by the registration of a land charge: L. C. Act, 1925, s. 10, Class C (iv).

(*Covenants by Tenant corresponding with the covenants contained in the Head Lease.*)

3. (*Proviso for re-entry, as Prec.* I, *Sect.* II, "*Houses*," *p.* 1047, *supra. See that it is sufficiently wide to enable the sub-lessor to re-enter in time to remedy a breach and prevent a forfeiture.*)

4. (*Covenant for quiet enjoyment, Form No.* 25, *p.* 1032, *supra.*)

Covenant by sub-lessor that in the event of his purchasing reversion in fee simple, sub-lessee shall have option of purchasing same from him.

[5. THE Lessor hereby further covenants with the Tenant that if, during the continuance of this Lease (*v*) and before the expiration of ten years from the date hereof, the Lessor shall agree to purchase the fee simple of the premises comprised in a Lease (hereinafter called the Head Lease) dated, &c., or of any portion of the same premises which shall include the premises hereby demised, the Lessor will forthwith inform the Tenant of such agreement and of the terms and conditions thereof, and will give the Tenant an opportunity of investigating the title concurrently with the Lessor, and the Tenant may at any time within one month after the receipt of such information and before the expiration of the said ten years give to the Lessor a notice in writing stating the wish of the Tenant to purchase the fee simple of the lands hereby demised, at the price which the Lessor shall have agreed to pay for such fee simple if the said lands shall be the sole subject of his purchase, but in the event of other property being included therein, then at a proportionate part of such price, such proportion to be settled in case of dispute by two arbitrators, one to be appointed by each party, or their umpire in accordance with the provisions of the Arbitration Act, 1889:

Provided as follows—

Expenses to be paid by sub-lessee.

(1) That the Tenant shall pay all the costs and expenses of both parties of and incidental to the purchase by the Tenant, and also the costs and expenses of and incidental to the purchase by the Lessor if the lands hereby demised shall be the sole subject of the said purchase, but if not, then a proportionate part thereof, such proportion to be settled in case of dispute in manner aforesaid:

Remoteness.

(*v*) If the term has more than twenty-one years to run these provisions as to purchasing the freehold or leasehold reversion must be limited within the perpetuity rule, otherwise the option will be void for remoteness: *Woodall* v. *Clifton* [1905], 2 Ch. 257; 74 L. J. Ch. 555; *Worthing Corpn.* v. *Heather* [1906], 2 Ch. 532; 75 L. J. Ch. 761. The references to ten years are required where the option is given by a fiduciary owner: S. L. Act, 1925, s. 51. In other cases twenty-one years can be substituted. The proper proportions of the purchase-money can be fixed by arbitration: *ib.*

Arbitration.

(2) That the Tenant shall be bound by the same terms and conditions as to title and otherwise as the Lessor shall be bound by, and the purchase by the Tenant shall be completed at the same time as the purchase by the Lessor, if the information by the Lessor to the Tenant respecting the said agreement to purchase shall have been given at least one month before the time appointed for completion, but if not, then the Tenant may postpone the completion of his purchase until the expiration of one month from the receipt of such information as aforesaid:

[Covenant that if sub-lessor shall obtain a renewed lease, he will grant a renewed lease for not more than sixty years to sub-lessee.]

[*or* 5. THE Lessor hereby further covenants with the Tenant that if, during the continuance of this underlease (*w*) and before the expiration of ten years from the date hereof, the Lessor shall obtain a renewed lease of the premises comprised in a Lease (hereinafter called the Head Lease) dated, &c., or of any portion of the same premises which shall include the premises hereby demised, then and in such case the Lessor shall, at the request and cost of the Tenant, and upon the surrender by him of this present underlease, grant to him a new underlease of the premises hereby demised, for the residue of the term to be granted to the Lessor by such new lease (except the last ten days of such term), or for a term not exceeding sixty years from the termination of this present Lease (whichever shall be the shorter), at the same rent as is hereby reserved, such new underlease to contain the same covenants and provisions on the part of the Tenant and Lessor respectively as are contained in this present Lease [including the covenants enabling the Tenant within the period hereinbefore authorised to purchase the fee simple], but without any provision for the renewal of such new underlease, and subject to such variations (if any) as may be rendered necessary if the renewed Head Lease shall contain covenants different from those in the present Head Lease, it being the intention that the covenants of the Tenant in the new underlease (other than the covenant for payment of rent) shall

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Effect of contract for perpetual renewal.

(*w*) See the last two notes. There must not be any provision for renewing the new underlease, such a provision would amount to a contract for perpetual renewal, and would operate as an agreement for a sub-demise, for a term less by one day than the term created by the head lease, free from any obligations for renewal or for payment of any fines: L. P. Act, 1922, 15th Sch., para. 7 (1).

Conversion into long terms. Only one renewal authorised.

Any head lease or underlease, which was perpetually renewable on 1st January, 1926, would have been converted into a lease or underlease for a long term: *ib.*, paras. 1 and 2. After 1925, there can only be a contract for one renewal and that for a term not exceeding sixty years from the termination of the existing lease.

correspond to those of the Lessor in the new Head Lease, so as to be a complete indemnity to the Lessor against such covenants so far as the same relate to the premises comprised in the new underlease:

[Sub-lessee to pay fine proportionate to that paid by sub-lessor, and proportionate part of costs.]

Provided that, upon any renewal of this underlease as aforesaid, the Tenant shall pay to the Lessor for such renewal a fine equal in amount to the fine payable by the Lessor for the renewal of the Head Lease, and shall also pay all other the costs and expenses attending the renewal of the Head Lease if the premises comprised in the underlease shall be the sole subject of the new Head Lease, but if not, then a proportionate part of the said fine, costs and expenses, such proportion to be settled in case of dispute by two arbitrators, one to be appointed by each party, or their umpire in accordance with the Arbitration Act, 1889, and the Tenant shall also pay all the costs and expenses attending the renewal of this underlease and of the counterpart of the new underlease:]

[Acknowledgment of right to production.]

[6. The Lessor hereby acknowledges the right of the Tenant to production of the Head Lease and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.]

In witness, &c.

No. VII.

UNDERLEASE *for the whole of the Term granted by the original Lease, except Ten Days, at an* Improved Rent. Underlessee *covenants to observe all the Covenants in the original Lease.*(*x*) (*Legal Estate.*)

Parties.

THIS UNDERLEASE is made (*date*), Between A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons from time to time entitled in reversion immediately expectant upon the term hereby granted), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part: Whereas:—

Lease.

(1) By a Lease (hereinafter called the Head Lease) dated, &c. (*date and parties*), All, &c., were demised by the said —— unto

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(*x*) The above Precedent is adapted to a case where it is intended that the underlessee shall take upon himself precisely the same obligations as are imposed on his lessor by the head lease, so as to be a complete indemnity to the latter. The same object can be better attained by omitting all reference to the head lease, specifying the term and inserting all the covenants and provisions contained in the head lease, see last Precedent.

the Lessor for the term (hereinafter called the Head Term) of [nine hundred and] ninety-nine years from the —— day of ——, 19—, at the yearly rent of £——, and subject to the Lessee's covenants and the conditions therein contained:

Agreement to grant underlease.

(2) The Lessor has agreed to grant to the Tenant an underlease of the same premises in manner hereinafter appearing:

NOW, in consideration of the rent hereinafter reserved and the covenants by the Tenant herein contained, THIS DEED WITNESSETH and it is hereby declared as follows:—

Sub-demise.

1. THE Lessor hereby demises unto the Tenant:

Parcels.

ALL, &c., being the premises comprised in the Head Lease,

TO HOLD unto the Tenant for the residue of the Head Term (except the last ten days thereof),

YIELDING AND PAYING, &c. (*reservation of rent similar to that in the Head Lease save that the amount of the rent will be larger*).

Covenants by underlessee to pay rent above reserved and to observe covenants in superior lease and indemnify underlessor therefrom.

2. THE Tenant hereby covenants with the Lessor that the Tenant will pay the rent hereby reserved at the time and in the manner aforesaid: And also will at all times during the term hereby granted observe and perform all the covenants and conditions contained in the Head Lease and on the Lessee's part to be observed and performed (except the covenant for payment of the rent thereby reserved) and will save harmless and keep indemnified the Lessor from and against the said covenants and conditions and all proceedings, costs, claims and demands in respect thereof: And in particular will, at the expiration or sooner determination of the term hereby granted, deliver up the premises to the Lessor in the same state and condition as the same ought to be in at the end of the Head Term under the covenant entered into by the Lessor in the Head Lease, and so that no money shall be payable by the Lessor to the superior landlord under such covenant and no loss or injury be suffered by the Lessor on account of repairs or dilapidations.

3. (*Proviso for re-entry for non-payment of rent or breach of covenants, as in Prec.* I, *Sect.* II, "*Houses,*" *p.* 1047, *supra, corresponding to the proviso in the Head Lease.*)

Covenant by underlessor to pay superior rent, and for quiet enjoyment.

4. THE Lessor hereby covenants with the Tenant that the Lessor will at all times pay the yearly rent reserved by the Head Lease and keep the Tenant indemnified therefrom and from all proceedings, costs, claims and demands in respect thereof: And also that, &c. (*covenant for quiet enjoyment, as in Form No.* 25, *p.* 1032, *supra*).

5. The Lessor hereby acknowledges the right of the Tenant to production and delivery of copies of the Head Lease, and undertakes for the safe custody thereof.

Acknowledgment of right of under-lessee to production of superior lease.

In witness, &c.

No. VIII.

LEASE *from* Year *to* Year *of a* Church of England School *to be used as such under the* Education Act, 1921.(*y*) (*Legal Estate.*)

Parties.

THIS LEASE is made (*date*), Between A. B., of, &c. (hereinafter called the Landlord, which expression, where the context admits, includes the persons from time to time entitled to the reversion expectant on the term hereby granted), of the one part, and the Rev. C. D., the Rector of the Rectory and Parish Church of P——, in, &c., E. F., of, &c., L. M., of, &c., G. H., of, &c., and I. K., of, &c. (hereinafter called the Trustees, which expression, where the context admits, includes the persons from time to time entitled to the term or tenancy hereby created), of the other part: Whereas :—

Establishment of school by ancestor of Landlord.

(1) A school was many years since established by a predecessor in title of the Landlord in the Village of P—— for the purpose of educating the children of poor people in elementary knowledge, and in the doctrines of the Church of England as by law established:

No trusts have been declared.

(2) No trusts have been declared with reference to the buildings and premises in which the said school has been carried on, nor has any lease been granted to or any agreement of tenancy made with the past or present managers of the said school, who occupy the same as tenants at will under the Landlord:

Intention to declare trusts.(*z*)

(3) It is expedient that the terms of the tenancy of the said school buildings and premises be properly defined and the trusts whereon the same are held duly declared:

NOW, in consideration of the rent hereinafter reserved and of

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(*y*) In this Precedent it is supposed that the lessor is the absolute owner of the school building, and that he wishes to make it a "non-provided" school under the Education Act, 1921. He wishes at the same time to retain full power to put an end to the lease in view of the possibility of the Act being hereafter altered so as to prevent a "non-provided" school from retaining its denominational teaching.

This lease is a trust deed within the meaning of the Education Act, 1921, s. 170 (17).

Reverter.

(*z*) As to reverter under the School Sites Act, 1841, where land given under that Act ceases to be used as a school: *A.-G.* v. *Shadwell* [1910], 1 Ch. 92;

the provisions herein contained and made binding on the Trustees, THIS DEED WITNESSETH, and it is hereby declared as follows:

Demise.

1. THE Landlord hereby demises unto the Trustees:

Parcels.

ALL THAT piece of land, with the buildings thereon, situated in the Parish of P——, in the County of ——, more particularly described in the Schedule hereto, and delineated on the plan hereto and thereon edged red,

Habendum.

TO HOLD unto the Trustees for the term of one year from the —— day of ——, 19—, and so on from year to year until the tenancy is determined by a year's notice given by either party to the other, at the yearly rent of 1*s*., payable on the —— day of —— in every year.

To be used as a school in accordance with Church of England.

2. (1) THE premises hereby demised shall be used as a public elementary school,(*a*) and the religious instruction and worship therein shall be in accordance with the doctrines and principles of the Church of England as by law established (except only as hereinafter provided):

(2) No person shall be appointed or continue to be the head-master or head-mistress of the school who is not a communicant of the Church of England:

(3) The Rector for the time being of the parish shall be allowed

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79 L. J. Ch. 113; *A.-G.* v. *Price* [1912], 1 Ch. 667; 81 L. J. Ch. 317; the order in the later case was discharged upon agreed terms [1914], A. C. 20; 83 L. J. Ch. 415. And see L. P. Act, 1925, s. 3 (3) (giving effect to equitable rights of reverter), ss. 1 (2) (e), 7, as amended (legal rights of reverter).

Elementary school.

(*a*) "Elementary School," see definition in the Education Act, 1921, s. 170 (1). A "public elementary school" is one that is conducted in accordance with the Education Act, 1921, s. 27. The local education authority (s. 3) is responsible for, and has control over, all secular instruction in such a school and may maintain and keep it efficient, provided the conditions in s. 29 are fulfilled, and the school is necessary. By s. 38 non-provided schools may be transferred to the local education authority in the manner provided by the 4th Sch., Pt. I, and re-transferred to the school managers in the manner provided by Pt. II of the same schedule. Before the managers of a non-provided school may close it, they must give at least eighteen months' notice to the local education authority of their intention to do so. If they cannot continue the school until the end of the period of notice they must, if the local education authority so desires, put the school-house (see s. 170 (6)) at the disposal of the local education authority for the rest of that period.

Grants in aid.

A non-provided school may obtain a Parliamentary grant in the manner provided by s. 120 and the 6th Sch. Provisions in an instrument regulating the trusts or management of a school which are inconsistent with the conditions prescribed for the receipt of such grants, cease to operate during any school year in which the school has been recognized by the Board of Education, for the purpose of grants. To qualify for a grant the school must be maintained: s. 29 (7).

to use the school as a Sunday school or for any other purpose when the same is not required to be used as an elementary school.

Provisions as to management.

3. The said school and premises and any endowments in respect of which no other provision shall have been made by the donor and the subscriptions and other funds (if any) belonging to the said school shall be directed, controlled, governed and managed in manner hereinafter mentioned (*b*) (that is to say)—

Minister to have superintendence of religious instruction, &c.

(1) The principal officiating minister for the time being of the said parish shall have the superintendence of the religious and moral instruction of all the children attending the said school (subject to any statutory provisions and to the provisions hereby made for the benefit of religious bodies other than the Church of England), with power to use or direct the premises to be used as a Sunday school :

Appeal to Bishop on certain questions.

(2) There shall be a right of appeal to the Bishop (*c*) of the diocese as to whether the character of the religious instruction and worship given and used in the said school is or is not in accordance with the provisions hereof :

Religious instruction for children of other beliefs.

(3) On the requisition in writing of the parents of not less than six children whose names are for the time being borne on the books of the school, reasonable facilities shall be afforded for instruction in accordance with the principles of any religious body besides the Church of England :

Foundation managers to have general control.

(4) In all other respects the management, direction, control and government of the said school shall be vested in the foundation managers from time to time appointed hereunder and the managers to be appointed under the provisions of the Education Act, 1921 :(*d*)

The Trustees to be the first foundation managers.

(5) The first foundation managers under the said Act shall consist of the four Trustees hereinbefore named, who shall (subject as hereinafter mentioned) continue to hold office during their respective lives or until any of them shall retire from the office :

Endowments.

(*b*) Endowments are not affected by the provisions of the Education Act, 1921, relating to the powers and duties of the local education authority in respect of unprovided schools, save that where the school is maintained by that authority, its endowment will be paid to that authority, to be credited in relief of the rate levied for the purpose of elementary education : s. 41.

Maintenance of school.

(*c*) Maintenance of a non-provided school by the local education authority under s. 29 (2) does not affect this provision : s. 29 (5) (c).

Foundation managers.

Ordinary managers.

(*d*) Under the Education Act, 1921, s. 30 (2), foundation managers must not exceed four in number and must be appointed as provided by ss. 31 and 32. As to appointment of managers : *ib.*, s. 30 (2).

BODLE

Minister to be chairman, &c.

(6) The principal officiating minister for the time being of the said parish shall be chairman of all meetings of the managers when present thereat, and at any meeting from which he shall be absent the members attending the same shall appoint one of their number to be chairman thereof, and all matters which shall be brought before any meeting shall be decided by a majority of votes of the members attending the same and voting upon the question; And if upon any matter there shall be an equality of votes the chairman shall have a second or casting vote:

Committee of ladies for supervision of girls, &c.

(7) The foundation and other managers for the time being may in the month of July in each year appoint a committee of not more than two ladies to assist the managers in the visitation and management of the girls and infant scholars, which committee shall remain in office until the day of the same month in the following year, when the committee may be reappointed: Provided that until a new appointment is made the members of the committee may continue to act:

Use of premises for other purposes.

(8) At any time when the premises are not required for use as an elementary or Sunday school the Landlord may use or direct the premises to be used for any other public purposes at his sole discretion.(*e*)

Power to determine tenancy.

4. Provided that from and after the determination of the said term of one year hereby granted the tenancy shall be determinable by either party giving to the other at least twelve months' previous notice in writing.

New trustees.

5. The Landlord shall have power from time to time to appoint a new trustee or new trustees hereof or, subject to the provisions of section thirty of the Education Act, 1921, a new manager or managers, and may by deed or writing remove any person from being a trustee or manager, and may thereupon appoint a new trustee or manager, as the case may be, in his place,(*f*) and may (subject as aforesaid) by writing appoint any person to be a manager in the place of any manager who retires or dies.

Landlord to indemnify Trustees against rates, &c.

6. The Landlord shall indemnify and keep indemnified the Trustees and the foundation and other managers for the time being and their respective estates and effects against all assessments and rates which may be made upon them as lessees or

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(*e*) As to the powers of the local education authority to use the school for other purposes, see the Education Act, 1921, s. 22.

(*f*) As to the operation of a power to remove trustees: T. Act, 1925, s. 36 (2).

occupiers of the premises, and also against any claims made against them or any of them under section twenty-nine (d) of the Education Act, 1921,(*g*) which they may be unable to comply with through want of sufficient funds for the purposes therein mentioned :

Provided that nothing herein contained shall relieve the local authority from any liability arising under that section or otherwise.

As to enforcing the trusts.

7. (1) THE Trustees may permit the foundation and other managers to use the premises without being concerned to see to the due performance of the trusts hereof :

(2) The Trustees shall not be liable for any loss which may occur through any act, deed or omission on the part of the said managers :

(3) The Trustees shall upon being requested so to do in any specific case in writing by the Landlord, and upon due provision being made to their satisfaction for the costs of all proceedings required to be taken, forthwith take such proceedings as the Landlord may require for compelling the managers for the time being to comply with the provisions hereof.

IN WITNESS, &c. (*Add Schedule.*)

(*g*) See *Wilford* v. *West Riding of Yorkshire C. C.* [1908], 1 K. B. 685 : 77 L. J. K. B. 436.

Power to remove Trustees.

PART III.

INSTRUMENTS RELATING TO LEASES.

SECTION I.

LICENCES, NOTICES, &c.

No. I.

LICENCE *by* LESSOR *to* LESSEE *to* ASSIGN *or* UNDERLET.(a) (*Legal Estate.*)

IN THE MATTER of a Lease [Underlease], dated ——, and made, &c., being a Lease of ——, at ——, for a term of —— years, from the ——, 19— [which is now vested in C. D., of, &c.]

(*Date.*) I, A. B., of, &c., being the [present] Lessor of the property comprised in the said Lease [Underlease], hereby consent to the said C. D. assigning the same [the property known as —— being part of the premises comprised in the said Lease [Underlease], at an apportioned yearly rent of £——], to E. F., of, &c., for the residue of the said term [*or* consent to the said C. D. underletting the said property [the property known as ——, being part of the premises comprised in the said Lease *or* Underlease], for the residue of the said term except the last —— days thereof *or* for a term of seven years from the —— day of ——, 19—]:

THIS consent does not authorise any further or other assignment [underletting] of the premises or any part thereof.

AS WITNESS my hand the day and year above written.

A. B. (*Lessor*).

No fine on consent to assignment.

(a) Unless the lease so provides, the lessor cannot claim a fine in consideration of the licence: L. P. Act, 1925, s. 144; the licence extends only to the actual assignment or underlease authorised by the licence: *ib.*, s. 143; see also *Chatterton* v. *Terrell* [1923], A. C. 578; 92 L. J. Ch. 605. As to waiver of a covenant: *ib.*, s. 148. Fiduciary owners can grant licences: S. L. Act, 1925, s. 56 (2); L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39. A licence for a mortgagee to assign on a sale must not be unreasonably refused: L. P. Act, 1925, s. 89 (1). The same applies to a licence to sub-demise by way of mortgage; *ib.*, s. 86 (1). No licence is usually required for a legal charge.

Mortgagees.

No. II.

LICENCE (*b*) *from* LESSOR *to* LESSEE *to grant an* UNDERLEASE *of* PART *of the* DEMISED PREMISES *upon* CONDITION *that the* UNDERLESSEE *shall not* ASSIGN *or* UNDERLET *without* CONSENT. (*Legal Estate.*)

THIS LICENCE is made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Lessor, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Tenant, which expression, where the context admits, includes the persons deriving title under him), of the other part: WHEREAS:— Parties.

(1) By a Lease dated, &c., and made between the Lessor of the one part, and the Tenant of the other part, the Lessor demised certain lands and rights therein described unto the Tenant for the term of —— years from the 24th day of June, 19—, at the yearly rent of £——, and subject to the covenants and conditions therein contained and on the Lessee's part to be observed and performed, including a covenant not to assign or underlet the premises or any part thereof without the previous consent in writing of the Lessor, and a proviso for re-entry on breach of any of the covenants therein contained: Lease.

(2) The Lessor has, at the request of the Tenant, agreed to grant to him such licence as hereinafter appearing, but subject to the covenants and conditions hereinafter contained: Agreement to grant licence.

NOW, in consideration of the premises, THIS DEED WITNESSETH as follows:—

1. (1) THE Lessor hereby grants to the Tenant Full Right (subject as hereinafter provided) to underlet to E. F., of, &c.: Grant of licence.

ALL, &c. (*describe parcels*), being part (*c*) of the premises demised by the recited Lease, from the —— day of —— last, for the residue of the said term of —— years thereby granted (except the last —— days thereof):

(2) Such underlease shall be granted subject to covenants and conditions corresponding to the covenants and conditions contained in the recited Lease and on the part of the Tenant to

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(*b*) As this instrument contains a covenant, it should be under seal; but a simple licence to assign or underlet may be by writing only, unless a deed is expressly required by the lease.

(*c*) A lessee under a licence to sub-let part of the premises cannot sub-let the whole by two or more sub-leases of parts of the premises: *Chatterton* v. *Terrell* [1923], A. C. 578; 92 L. J. Ch. 605.

be observed and performed (except the covenant for payment of rent) so far as the same covenants and conditions relate to the premises to be comprised in such underlease, and shall be made on the express condition that the said E. F., and the persons deriving title under him, shall not at any time assign, underlet or otherwise part with possession of the last-mentioned premises, or any part thereof, for the whole or any part of the term to be granted by such underlease, without the previous consent in writing of the owner for the time being of the term demised by the recited Lease [and of the Lessor as the superior landlord].

Covenant by Lessee not to waive condition against assignment, &c., to be inserted in underlease without Lessor's consent.

2. THE Tenant hereby covenants with the Lessor that the Tenant will not, without the consent in writing of the Lessor, release or waive the condition against assignment, underletting, or parting with possession to be contained in the intended underlease as aforesaid, but will (unless otherwise directed by the Lessor) re-enter on the premises comprised in the same underlease in case of any breach of such condition and otherwise take full advantage thereof.

Proviso for re-entry in superior Lease to extend to a breach of the above covenant.

3. THE proviso for re-entry contained in the recited Lease shall be exercisable, not only in case of the breach of any of the covenants therein contained, but also in case of any breach of the foregoing covenant.

IN WITNESS, &c. [*Notice of this deed should be endorsed on the Lease.*]

No. III.

LICENCE *by* SUPERIOR LESSOR *and* UNDERLESSOR *to an* UNDERLESSEE *to assign.* (*Legal Estate.*)

WHEREAS :—

Recitals of Lease and Underlease.

(1) (*Recite Lease* (hereinafter called the Head Lease) *from A. B. to C. D., as in last Precedent*) :

(2) By a deed (hereinafter called the Underlease) dated, &c., and made, &c., the said C. D. (having first obtained the consent in writing of the said A. B.) demised ALL, &c. (*parcels*), unto the said E. F. for the residue of the said term of —— years granted by the Head Lease (except the last —— days thereof) at the yearly rent of £——, and subject to the covenants therein contained and on the Lessee's part to be observed and performed, being covenants to the like effect as the Lessee's covenants contained in the Head Lease, and also a covenant by the said

E. F. not to assign or underlet without the previous consent in writing of the said C. D., or the persons deriving title under him, and also of the said A. B., and the persons deriving title under him, and subject also to a condition for re-entry on breach of any of the said covenants :

Application by Underlessee for licence to assign.

(3) The said A. B. and C. D. have, at the request of the said E. F., agreed to grant their licence to such assignment as is hereinafter mentioned :

Superior Lessor and Underlessor give licence to Underlessee to assign.

NOW, THEREFORE, the said A. B. and C. D. do, and each of them doth, hereby grant to the said E. F. licence to assign all the premises comprised in the Underlease unto G. H., of, &c., subject to the rent, covenants and conditions by and in the Underlease contained and on the Underlessee's part to be observed and performed, including the covenant against assigning and underletting without consent, which covenant shall remain in full force as against the said G. H. and the persons deriving title under him.

As WITNESS the hands of the said A. B. and C. D. this —— day of ——, 19—.

No. IV.

ENDORSEMENT *by* STEWARD *of the* MANOR *on the* GRANT *of a* LEASE, UNDERLEASE, *or* TENANCY *or on an* ASSIGNMENT *of a term or sub-term ; not being a grant or assignment of a lease or tenancy for a year or less or from year to year.*(d) (*Legal Estate.*)

FORM OF ENDORSEMENT *prescribed by the* ENFRANCHISED LAND (CERTIFICATE OF ENDORSEMENT) REGULATIONS, 1925.

I, ——, Steward of the Manor of ——, in the Parish of ——, in the County of ——, in pursuance of the provisions of section one hundred and twenty-nine of the Law of Property Act, 1922,

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Underleases and assignments.

(*d*) See L. P. Act, 1922, s. 129 (9). The section does not apply to dealings with interests not affected by manorial incidents : *ib.*, sub-s. (11). *Semble*, as a general rule, an underlease and an assignment will not have to be produced to the steward, for under the old law a licence to demise having been granted, no further licence or entry on the rolls was required on any dealing by the lessee. If, however, by special custom, the interest of the lessee or of the underlessee was treated as a customary interest, it would remain affected by manorial incidents (till extinguished), hence dealings therewith would have to be produced. Fines remain payable where under the old law a customary assurance or a licence from the lord would have been required : *ib.*, s. 130.

Fines.

hereby certify that the within-written assurance of an interest in enfranchised land held of the said Manor was produced to me before the expiration of [six months from the date of its execution] [the extended period allowed by Order of the Court dated the —— day of ——, 192—].

——, 19—.

Signature of Steward.

Form of Stamp

Produced as required by section 129
of the Law of Property Act, 1922.

——, Steward of the Manor.

——, 19—.

No. V.

ENDORSEMENT *of* NOTICE *that* LEASE *or* UNDERLEASE *was* PERPETUALLY RENEWABLE *immediately before 1st January*, 1926. (*Legal Estate.*)(*e*)

Law of Property Act, 1922.

Notice that lease was perpetually renewable.

(*Date*) TAKE NOTICE that the within-written Lease [Underlease] [*or* that the Lease [Underlease] referred to in the within-written Assignment] was perpetually renewable at the commencement of the said Act [as respects the land comprised in the said Assignment].

(To be signed by the Lessor [or Underlessor] or by his solicitor or agent on his behalf, stating in the latter case on whose behalf the Notice is signed.)

"Commencement" of Acts.

(*e*) See L. P. Act, 1922, 15th Sch., para. 10 (1) (iii). The Act commences on expiration of 31st December, 1925: Interp. Act, 1889, s. 36 (2); L. P. (Postponement) Act, 1924.

Additional rent, when commences.

The first instalment of additional rent becomes payable on 1st January, 1927, and thereafter on every 1st January unless otherwise agreed between the lessor and lessee: L. P. Act, 1922, 15th Sch., paras. 12 and 14; and see next Precedent and notes thereto.

Production before 1st January, 1927.

The lease or underlease or sufficient evidence thereof must be produced to the lessor or his agent for endorsement of the notice *before* the 1st January, 1927, a default would be a breach of covenant: *ib.*, para. 10 (1) (iii); the additional rent should be agreed or ascertained before that date.

Statements by fiduciary owners endorsed on leases.

As to statements contained in or endorsed on leases and signed by fiduciary owners as to matters under the S. L. Act, see s. 42 (3) of that Act, also L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39.

No. VI.

ENDORSEMENTS *on* LEASE [UNDERLEASE] *formerly perpetually renewable or on an* ASSIGNMENT *of part of the land comprised in such a* LEASE *or* UNDERLEASE *as to matters agreed between* LESSOR *and* LESSEE, *pursuant to para.* 14 *of the* 15*th Sch. to the L. P. Act,* 1922. (*Legal Estate.*)(*f*)

Law of Property Act, 1922.

(*Date*) IT IS HEREBY DECLARED as follows :—

[Annual instalments of additional rent.]

[(1) The amount of the additional annual rent in respect of the premises demised [assigned] by the within-written deed, under the 15th Schedule to the said Act, shall be the yearly sum of £——, which shall be paid by four [two] equal instalments on the quarter [half-yearly] days fixed by the said deed [the within mentioned Lease] for the payment of rent in every year, the first instalment to be paid [to be deemed to have become due] on the —— day of ——, 19—, *or*]

[Commutation of additional rent.]

[(1) The additional rent payable in respect of the premises demised by the within-written deed, under the 15th Schedule to the said Act, has been commuted for a principal sum of £——, *or*]

[Apportionment of aggregate rent.]

[(1) The aggregate rent of £—— (including additional rent payable under the 15th Schedule to the said Act) is hereby apportioned in respect of —— (*describe the land in regard to which the apportionment is made generally by reference to an assignment of part*) (being part of the land demised by the Lease [Underlease] within referred to), which rent shall be paid by four [two] equal instalments on the quarter [half-yearly] days fixed by the said Lease [Underlease] for the payment of rent, the first instalment of additional rent (which as respects the said land, part of the land demised as aforesaid, has been agreed at a yearly sum of £——) to be paid [to be deemed to have become due] on the —— day of ——, 19—.]

Power to determine lease.

(2) The dates on which the Lessee [Underlessee] has power, pursuant to paragraph ten of the 15th Schedule to the said

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(*f*) An endorsement on the lease, underlease, or assignment, signed by the lessor (where the context requires this means the underlessor) and by the lessee or underlessee, is conclusive evidence. The costs are payable by the lessee or underlessee: L. P. Act, 1922, 15th Sch., para. 14 (2); 1 Wolst. & Cherry, 11th ed., 101–102; and see s. 190 for definitions.

Endorsement conclusive. Costs.

Act, to determine the within-written Lease [Underlease] [*or* to determine the Lease [Underlease] referred to in the within-written Assignment as respects the land comprised in that Assignment] are the —— day of ——, 19—, and thereafter on the —— day of —— in every successive fourteenth [*or other period reckoned according to the interval or average interval of renewals in the past*] year of the statutory term, reckoned in each case from the last preceding date on which the said term might have been determined by giving at least ten days' previous notice in writing in accordance with the said paragraph.

(To be signed by the Lessor and Lessee, or Underlessee.)

No. VII.

NOTICE *by* LESSEE *or* UNDERLESSEE *selecting the* FIRST RENEWAL DATE *after the commencement of the L. P. Act,* 1922, *for the purpose only of ascertaining the* ADDITIONAL RENT.(g)

Law of Property Act, 1922.

In the Matter of a Lease [Underlease] dated, &c.

Notice selecting date.

(*Date*) TAKE NOTICE that, pursuant to paragraph 12 (2) (b) of the 15th Schedule to the said Act, I, A. B., of, &c. (the present Lessee [Underlessee] under the said Lease [Underlease],) hereby select the —— day of ——, 19—, as the date for the occasion on which the first renewal after the commencement of the said Act would have occurred if the said Lease [Underlease] had remained renewable.

To C. D., of, &c., or other the lessor under the said Lease [Underlease] within the meaning of the said Act.

(To be signed by the Lessee.)

Right to renew at different times.

(g) This notice, if given at all, must be given before 1st January, 1927. It is only applicable where the lessee had, under the lease, a right to renew at different times. In default of notice, the last day on which he had a right to renew will be taken to be the renewal date on which the fines, &c., would have been payable. If the date is not ascertainable from the lease it can be agreed within one year, in default it will be fixed by the Minister. The date is only material for the purpose of ascertaining the additional rent.

No. VIII.

NOTICE *to quit by a* LANDLORD *to a* TENANT (*h*) *from Year to Year,* (*i*) *relating either to the* WHOLE *or* PART *of the* HOLDING.

To C. D. (*Tenant*) and all others whom it may concern.

I, A. B., of, &c. (*Landlord*) [*or* I, A. B., of, &c., as agent for and on behalf of your Landlord, E. F., of, &c.], hereby give you notice to quit and deliver up possession of —— (*describing the property shortly ; if the notice relates to part only of the holding, this should appear in the description*), which you hold of me [*or* of the said E. F.], on the —— day of ——, 19— [or on other the day on which the current year of your tenancy will expire next after the end of [half] a year (*j*) from the time of your being served with this notice (*k*)].

Dated the —— day of ——. (Signed) A. B.

Compensation for disturbance.

(*h*) By the Agr. H. Act, 1923, s. 12, a tenant of an " agricultural holding " (s. 57 (1)), whose tenancy is determined by a notice to quit, may claim compensation for disturbance unless the tenant, at the date of the notice, was not cultivating the holding according to " the rules of good husbandry " (s. 57 (1)), or the notice was given for any reason except as mentioned in that section. Compensation for improvements may also be claimed under s. 1. For notices of claims for compensation, see *infra*, pp. 1216, *et seq*.

When a notice to quit expires.

(*i*) A notice to quit must expire at the period of the year at which the tenancy commences. A tenancy commencing on the 19th May ends at midnight of the 18th May, and a notice to quit on the 18th would be good, and a notice to quit on the 19th would be also good.

Notices to quit. Meaning of " half-year."

A half-year for the purpose of notice consists of 182 days, except when the tenancy begins from one of the usual quarter days, in which case notice on one quarter day to quit on the next but one is sufficient : *Roe* v. *Doe* (1830), 6 Bing. 574 ; 8 L. J. (O.S.) C. P. 227 ; *Sidebotham* v. *Holland* [1895], 1 Q. B. 378 ; 64 L. J. Q. B. 200. A tenancy " subject to three months' notice on either side at any time to terminate this agreement " is determinable on three months' notice expiring *on any day : Soames* v. *Nicholson* [1902], 1 K. B. 157 ; 71 L. J. K. B. 24 ; but a tenancy " until such tenancy shall be determined as hereinafter mentioned "—namely, a power " to determine the tenancy hereby created by three calendar months' notice "—creates a yearly tenancy determinable by three months' notice expiring *with any year* of the tenancy : *Lewis* v. *Baker* [1906], 2 K. B. 599 ; 75 L. J. K. B. 848 ; *Mayo* v. *Joyce* [1920], 1 K. B. 834 ; 89 L. J. K. B. 561. A tenancy " for two years certain and thereafter from year to year " precludes notice to determine being given before the end of the third year : *Re Searle* [1912], 1 Ch. 610 ; 81 L. J. Ch. 375.

Time for quitting.

A tenant under notice to quit may retain possession until midnight of the day of the year on which the tenancy commenced : *Page* v. *More* (1850), 15 Q. B. 684. A tenancy *from* the 25th March begins at midnight, the 25th to 26th March : *Meggeson* v. *Groves* [1917], 1 Ch. 158 ; 86 L. J. Ch. 145.

Year's notice.

(*j*) If a year's notice is requisite under Agr. H. Act, 1923, s. 25, substitute here " a year " for " half a year." The operation of s. 25 cannot be excluded by agreement ; under s. 27, notice to quit part of a holding held from year to year, may be given : See also L. P. Act, 1925, s. 140 (2), as amended by L. P. (Amend.) Act, 1926, s. 2, as to notices by an owner of part of the reversion : pp. 935–36, *supra*.

(*k*) The words in brackets will be inserted wherever there is any doubt

No. VIIIA.

COUNTER NOTICE *by* TENANT *accepting* NOTICE *by his* LANDLORD *of part of the* HOLDING *as a* NOTICE *to* QUIT *the* ENTIRE HOLDING.(*l*)

IN THE MATTER of the Tenancy Agreement dated, &c., and made between L. M., of, &c., of the one part, and R. T., of, &c., of the other part (relating to the Farm known as ——, in the parish of ——, in the County of ——):

To the said L. M., and to L. P., of, &c. (the purchaser of the fee simple of part of the said Farm)

Acceptance of notice as notice to quit the entire holding.

(*Date.*) I, the said R. T., hereby give NOTICE that I accept the NOTICE to QUIT dated, &c., and served on me by the said L. P., on the —— day of ——, 19— (being a notice to Quit the Farmhouse and —— acres or thereabouts, part of the said holding, on the —— day of —— next), as a notice to quit the entire holding given by the said L. M. and L. P., to take effect on the said —— day of —— next.

(Signed) R. T.

No. IX.

NOTICE *to quit by* LANDLORD *to a* WEEKLY TENANT.

To C. D. (*Tenant*) and all others whom it may concern.

I, A. B., of, &c. (*Landlord*) [*or* I, A. B., of, &c., as agent for and on behalf of your Landlord, E. F., of, &c.], hereby give you notice to quit and deliver up possession of the cottage, &c. (*describing it shortly*), which you hold of me [*or* of the said E. F.], on Saturday, the —— day of —— next, or on other the day on which the current week of your tenancy will expire next after the end of a week from the time of your being served with this notice.

Dated, &c. (Signed) A. B.

Tenant holding over.

as to the day on which the tenancy commenced. As to the determination of a new tenancy where the tenant for a term of years holds over, and pays rent: *Croft* v. *Blay* [1919], 2 Ch. 343; 88 L. J. Ch. 545.

Counter notice.

(*l*) See L. P. Act, 1925, s. 140 (2), as amended by L. P. (Amend.) Act, 1926, s. 2. The counter notice must be served within twenty-eight days of the service of the original notice, and must take effect at the same time as that notice. The tenant will be entitled to compensation as against both landlords as if he had accepted a notice under Agr. H. Act, 1923, s. 12 (7) (d).

No. X.

NOTICE *of* OWNER'S *intention to apply to* JUSTICES *to Recover Possession of a Cottage held on a weekly tenancy under the* SMALL TENEMENTS RECOVERY ACT, 1838 (1 & 2 Vict., c. 74).(*m*)

To X. Y., of, &c. (*Tenant*) or other the occupier for the time being of ——.

(*Date.*) I, A. B., of, &c. (*Owner*) [*or* I, A. B., of, &c., as agent for E. F., of, &c. (*the Owner*)], do hereby give you notice, that unless peaceable possession of the tenement (*shortly describing it*) which was held of me [*or* of the said E. F.] under a weekly tenancy,(*n*) which was determined (*o*) by notice to quit from me [*or* the said E. F.] on the —— day of —— last, and which tenement is now held over and detained from me [*or* the said E. F.], be given to me [*or* the said E. F.] on or before the expiration of seven clear days from the service of this Notice, I shall on —— next, the —— day of ——, at —— of the clock on the same day, at ——, apply to His Majesty's justices of the peace acting for the district of —— (*being the district, division or place in which the tenement or any part thereof is situated*), in petty sessions assembled, to issue their warrant directing the constable of the said district to enter and take possession of the said tenement, and to eject any person therefrom.

(Signed) A. B.

No. XI.

NOTICE *to quit by* TENANT *from Year to Year.*(*p*)

To A. B. (*Landlord*), and all others whom it may concern.

I, C. D., of, &c. (*Tenant*), hereby give you notice, that I shall

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(*m*) This notice must be served either personally or by leaving it with some person being in and apparently residing at the place of abode of the person holding over, and the person serving the notice must read it over to the person served or with whom it is left and explain the purport and intent of it. If, however, the person holding over cannot be found, and his place of abode is not known, or admission thereto cannot be obtained, the summons may be posted up on some conspicuous part of the premises.

If the tenant does not actually occupy the premises, or only occupies a part, the notice must be served on the actual occupier. As to the operation of the Rent Restriction Acts, see s. viii, last chapter, pp. 988, *et seq.*

(*n*) Or "on a tenancy from year to year," or otherwise, as the case may be.

(*o*) Or "expired," or otherwise, as the case may be.

(*p*) Where it was provided that a tenancy should continue until the 31st December, 1911, and should continue thereafter subject to determination by quit and deliver up on the —— day of ——, 19—, the possession of the (*describe the property shortly*), which I now hold of you as a yearly tenant.

Dated this —— day of ——.

(Signed) C. D.

No. XII.

NOTICE *by* TENANT *to determine a* LEASE.(q)

To C. D. (*Landlord*), and all others whom it may concern.

I, A. B., of, &c., hereby give you notice, that pursuant to the power for this purpose given to me by the Lease dated the —— day of ——, and made between you of the one part and me of the other part, it is my intention to determine the Lease thereby made on the —— day of —— next, and I shall accordingly quit and deliver up possession to you of the property situated at, &c., comprised in the said Lease on the said —— day of ——.

Dated this —— day of ——.

A. B. (*Tenant*).

No. XIII.

NOTICE *by a* LESSOR *to his* LESSEE *requiring him to put the* PREMISES *in* REPAIR *pursuant to a* COVENANT *contained in the* LEASE.(r)

To C. D. (*Tenant*) and all others whom it may concern.

I, A. B., of, &c., hereby give you notice and require, that pursuant to the covenant for that purpose contained in the Lease dated the —— day of ——, under which you hold the —— (*describing the property shortly*), you do and execute, within six months from the date hereof, the repairs in and upon the said property, which are specified in the Schedule to this notice.

Dated this —— day of ——.

THE SCHEDULE.

A. B. (*Landlord*).

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twelve months' notice, notice to determine could not be given before 1912: *Re Brinsmead* (1912), 56 Sol. J. 253.

Notice by tenant.

(q) The notice should be given by the person entitled to the legal term: *Stait* v. *Fenner* (1912), 56 Sol. J. 669; and *cf. Seaward* v. *Drew* (1898), 67 L. J. Q. B. 322. Where a perpetually renewable lease has been converted into a long term, the lessee has power to give notice to determine the term on the dates when, had the lease remained renewable, there would have been a right to renew. These dates will usually be endorsed on the lease: L. P. Act, 1922, 15th Sch., paras. 10 and 14.

Decorative repairs.

(r) See next Precedent. If a notice is served on a lessee of a building,

No. XIV.

NOTICE *by* LESSOR *to* LESSEE *under* SECTION 146 *of the* L. P. ACT, 1925, *requiring him to* REMEDY BREACHES *of* COVENANT [*and pay* COMPENSATION].

Law of Property Act, 1925.

To C. D., of, &c., the Lessee of —— (*describing property shortly*), comprised in a Lease dated, &c., and made, &c. (*date and parties*), and to all others whom it may concern.

I, A. B., of, &c. (*Lessor*), being the person entitled to the reversion of the above-mentioned premises expectant on the said Lease, hereby, pursuant to section one hundred and forty-six of the said Act, give you notice that you have broken the covenant contained in the said Lease to keep the premises in good and substantial repair [and also the covenants as to outside and inside painting], and that I have specified in the Schedule hereto the particular breaches of which I complain and the repairs and work which ought to be done to remedy the same: Notice of Lessee.

AND I HEREBY REQUIRE YOU to remedy the said breaches [but without effecting (*s*) internal decorative repairs within section one hundred and forty-seven of the said Act save so far as such repairs may be consequential on making good other breaches] [and also to pay to me fair and reasonable compensation in money for the same]:

AND I HEREBY FURTHER GIVE YOU NOTICE that unless you comply with the above requirement within a reasonable time, I shall proceed to enforce my right of re-entry under the Lease.

Dated this —— day of ——, 19—.

THE SCHEDULE.

(*To specify the particular breaches and the repairs and work to be done.*)(*t*)

A. B. (*Lessor*).

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relating to internal decorative repairs, he may apply to the court for relief under L. P. Act, 1925, s. 147, subject to the exceptions in sub-s. (2). The length of the term remaining unexpired is a material factor.

(*s*) No reference should be made to s. 147 if the breach arises on a covenant to yield up in repair. That section is only designed to prevent claims being made well before the end of the term to effect decorative repairs.

(*t*) See 1 Wolst. & Cherry, 11th ed., 379–92. Notices of breaches should specify the work to be done to remedy them: *Horsey Estate, Ltd.* v. *Steiger* [1899], 2 Q. B. at p. 91; 68 L. J. Q. B. 743; and *cf. Piggott* v. *Middlesex, &c., Council* [1909], 1 Ch. 134; 77 L. J. Ch. 813; *Fox* v. *Jolly* [1916], 1 A. C. 1;

No. XV.

NOTICE *by* LESSEE *to* LESSOR *of Election to Purchase the* FREEHOLD, *pursuant to a Power contained in the* LEASE *for this purpose.*

To A. B. (*Lessor*), and all others whom it may concern.

I, C. D., of, &c., hereby give you notice, that pursuant to the power for this purpose given to me by a Lease dated the —— day of ——, whereby certain property at ——, was demised by you to me for a term of —— years, I elect and agree to purchase the said property and the fee simple thereof at the price of £——, and in all respects to comply with the terms prescribed by the said Lease in respect of such purchase by me: And I request you, on or before the expiration of one month from the date hereof, to make out and deliver to me an abstract of the title to the said property according to the stipulation for that purpose contained in the said Lease.

AS WITNESS my hand this —— day of ——.

C. D. (*Lessee*).

SECTION II.

COMPENSATION NOTICES UNDER THE AGRICULTURAL HOLDINGS ACT, 1923.

No. I.

NOTICE *by a* TENANT *of an Agricultural Holding to his* LANDLORD *of damage by* GAME *to crops on his holding.*(*u*)

To A. B. (*Lessor*) and all others whom it may concern.

Claim for damage by game.

I, C. D., of, &c., tenant of —— Farm, in the parish of ——, and in the county of ——, hereby give you NOTICE that I

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84 L. J. K. B. 1927. As to the general principles on which relief will be granted under s. 146: *Rose* v. *Spicer* [1911], 2 K. B. 234; 80 L. J. K. B. 1011; reversed on facts in D. P., *sub nom., Hyman* v. *Rose* [1912], A. C. 623.

Tenant's right to compensation for damage by game.

(*u*) The Agr. H. Act, 1923, s. 11, confers on the tenant of an agricultural holding the right to claim compensation from his landlord for damage done by game, the right to kill which is vested in any person other than the tenant or his assigns. The claim is not sustainable unless the damage exceeds the rate of one shilling per acre of the area over which the damage extends. In default of agreement the claim must be submitted to arbitration under the Act.

Conditions precedent to the grant of compensation.

The claim cannot be sustained unless the following conditions have been complied with:—

Notice of damage.

(1) Notice in writing of the damage must be given to the landlord as soon as possible after the damage was first observed.

have sustained damage to crops on the said farm by game, the particulars of which are given in the Schedule hereto, and for which I intend to claim compensation under section eleven of the Agricultural Holdings Act, 1923, having previously notified you in writing of the damage occurring as soon as it was observed.

I HEREBY AUTHORISE you, or your agent, to enter on the said farm for the purpose of inspecting the damage.

AS WITNESS my hand this —— day of ——, 19—.

SCHEDULE OF DAMAGE.

Where suffered.	Particulars of Damage.	Whether Crop was damaged when Growing or otherwise.

C. D. (*Lessee*).

No. II.

NOTICE *by a* TENANT *of an Agricultural Holding of intention to claim from his landlord*[*s*] *compensation for* DISTURBANCE.(*v*)

To A. B., of, &c. (*Lessor*) [and R. P., of, &c.] (*purchaser of part of the farm*), and all others whom it may concern.

I, C. D., of, &c., tenant of —— Farm, in the parish of ——, in the county of ——, hereby give you NOTICE of my intention

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Right to inspect.

(2) The landlord must be given a reasonable opportunity to inspect the damage—

(a) in the case of damage to a growing crop, before that crop is reaped, raised or consumed, or

(b) in any other case, before any part of such crop is removed from the land.

Notice in writing of the claim.

(3) Notice in writing of the claim, with the particulars thereof, must be given to the landlord within one month after the expiration of the calendar year in respect of which the claim is made, or within any other agreed period of twelve months: s. 11 (2). For the final claim: Prec. V, *infra*.

Substituted compensation under certain tenancies.

In the case of tenancies made before 1909 any special provisions in the contract of tenancy as to compensation for damage by game will be taken into account.

Right of landlord to be indemnified.

Where the game rights are vested in any person other than the landlord, the landlord is entitled to be indemnified from all claims under this section.

Meaning of "game."

Game in this section means deer, pheasants, partridges, grouse, black game.

Service of notices under this Act.

As to the service of notices under this Act, *ib.*, s. 53. As to the persons who are included in the term "landlord" for this purpose: *ib.*, ss. 53, 57 (2); also Agr. (Amend.) Act, 1923, s. 2.

(*v*) Where, by reason of a notice to quit, a tenant of an agricultural holding leaves that holding, he is entitled to compensation for disturbance under to claim compensation for disturbance under section twelve [*or other section applicable*] of the Agricultural Holdings Act, 1923, on quitting the said farm, pursuant to the notice to quit dated the —— day of ——, 19—, given by you [*or* given by the said R. P., as to part of the Farm which was by a counter notice served by me treated as a Notice to quit the entire holding] I HEREBY AUTHORISE you or your agent[s] to enter on the said farm for the purpose of making a valuation of my household goods, farm and other implements, and farm stock.

AS WITNESS my hand this —— day of ——, 19—.

C. D. (*Lessee*).

No. III.

NOTICE *by a* TENANT *of an agricultural holding to his landlord of intention, on quitting the holding, to claim compensation in respect of the increased* VALUE.(*w*)

To A. B., of, &c. (*Lessor*), and all others whom it may concern: I, C. D., of, &c., tenant of —— Farm in the parish of —— and in the county of —— hereby give you NOTICE that upon quitting the said farm pursuant to your notice dated the —— day of —— 19—, I intend to claim compensation under section

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Compensation for disturbance under ss. 12, 13, 14.

s. 12 unless the holding forms part of any park, garden, or pleasure ground attached to or usually occupied with the mansion house in which case he is entitled to compensation under s. 13, or is a cottage holding to which s. 12 is not applicable. Though, under s. 14, the provisions of s. 13 are made applicable to cottage holdings.

Time for notice.

The tenant must give to his landlord notice of his intention to make a claim, under s. 12, not less than one month before the end of the tenancy, and in the case of s. 13, within two months of receiving notice to quit.

Special provisions exempting landlord from compensation under s. 14.

Special provisions exempting the landlord from his liability to pay compensation under s. 14 are given: *ib.*

Form of notices and manner of service.

Notices of intention to claim must be in writing and served in the manner prescribed by s. 53.

L. P. (Amend.) Act, 1926, s. 2.

The notice in the text is also (see the words in brackets) made applicable to claims for disturbance authorised under L. P. (Amend.) Act, 1926, s. 2, amending L. P. Act, 1925, s. 140 (2).

Conditions precedent to grant of compensation.

(*w*) Compensation under s. 9 is conditional upon—

(1) A record of the condition of the holding having been made before the date of the improvement for which compensation is claimed.

(2) The tenant having, before the end of his tenancy, served on his landlord notice of his intention to make such claim.

Allowance for compensation for improvements in 1st Sch.

In the arbitration, allowance will be made for any compensation received by the tenant in respect of any improvement specified in the 1st Sch. to the Act, which has contributed to the increase in value of the holding.

Local customs.

References to the obligations under a tenancy include obligations implied by local custom: s. 57 (3).

nine of the Agricultural Holdings Act, 1923, in respect of the extent to which the value of that farm has been increased to any incoming tenant, by reason of the adoption by me of a special standard or system of farming [more beneficial than that required to be adopted by the Tenancy Agreement dated, &c., and made between us].

As WITNESS my hand this —— day of ——, 19—.

C. D. (*Lessee*).

No. IV.

NOTICE *by a* LANDLORD *of an agricultural holding of his intention to claim, from an outgoing tenant, compensation in respect of the* DETERIORATION *of the holding.*(*x*)

To C. D., of, &c. (*Lessee*), and all others whom it may concern :

I, A. B., of, &c. (*Landlord*), hereby give you NOTICE that, upon the determination of your tenancy, now subsisting, of —— Farm, in the parish of ——, and county of ——, I intend to claim compensation under section ten of the Agricultural Holdings Act, 1923, in respect of the deterioration of the said holding [so much of the said holding as is described in the Schedule hereto], due to your failure to cultivate [that part of] the said holding according to the rules of good husbandry [according to the terms of the contract of tenancy]. Claim for deterioration or dilapidations.

As WITNESS my hand this —— day of ——, 19—.

(*Add Schedule showing the parts of the holding affected by the Notice.*)

A. B. (*Lessor*).

No. V.

NOTICE *of claim for a stated sum as compensation for* IMPROVEMENTS, &c.

To A. B., of, &c. (*Lessor*), and all others whom it may concern :

I, C. D., of, &c., hereby (pursuant to my intention expressed in the Notice given by me to you and dated, &c.), give you further

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(*x*) The notice must be sent before the end of the tenancy or compensation cannot be claimed under s. 10; a landlord may, however, claim such compensation, or compensation for dilapidations, under the contract of tenancy independently of the section. Time for notice.

As to the meaning of "rules of good husbandry": *ib.*, s. 57 (1). "Rules of good husbandry."

In the case of arable land, a tenant has full right (save in the last year of the tenancy) to practice any system of cropping which he chooses, notwithstanding any restrictive provision in the tenancy agreement, but in doing so he must take care not to damage the holding.

NOTICE that I claim [the aggregate sum of] £——, as compensation for the items specified in the Schedule hereto, to which I am entitled (*y*) under the Agricultural Holdings Act, 1923.

AS WITNESS my hand this —— day of ——, 19—.

[*Add Schedule of items stating the sum claimed after each.*]

C. D. (*Lessee*).

Compensation for improvements.

(*y*) Under the Agr. H. Act, 1923, s. 1, a tenant of an agricultural holding, on quitting his holding, is entitled to compensation from his landlord in respect of improvements mentioned in the 1st Sch. Improvements mentioned in Pt. I of the 1st Sch. require the landlord's consent, that mentioned in Pt. II (Drainage) requires notice to be given to the landlord not more than three or less than two months before the improvement is commenced; improvements mentioned in Pt. III neither require notice or consent: *ib.*, ss. 2 and 3.

Substituted compensation, when authorised.

In the case of improvements mentioned in the 1st Sch., Pts. I and II, compensation by agreement may be substituted for compensation under the Act, but in respect of improvements mentioned in Pt. III, substituted compensation is only allowed if contained in an agreement made before 1921: s. 4.

Payments made to previous tenant.

As to determination of claims for compensation: s. 5. A tenant, who, with the consent of his landlord, has paid compensation for improvements to the previous tenant may, on quitting the holding, claim compensation from the incoming tenant in respect of such improvements: s. 6.

A tenant does not lose his right to compensation by remaining in his holding during two or more tenancies: s. 7.

Restrictions on claims for improvements.

A tenant's right to compensation under s. 1 is restricted, in respect of improvements other than manuring—

(i) in the case of tenancies from year to year, to improvements begun before the beginning of the last year before he quits the holding, or before he receives or gives notice to quit;

(ii) in any other case, to improvements begun before the last year of the tenancy: s. 8.

This restriction does not apply—

(i) Where the tenant has, before beginning the improvement, served a notice on the landlord of his intention to make it, and the landlord has consented, or has not objected, to such improvement within one month after receipt of such notice: *ib.*, s. 8; or

(ii) In the case of a tenant from year to year, the tenant has begun the improvement during the last year of his tenancy and the tenant quits the holding at the end of that year pursuant to a notice to quit given by the landlord after the improvement has been begun: *ib.*, s. 8.

Form may be used for claims in respect of other matters.

The above form of notice is not confined to claims for improvements, it may include a claim for compensation for damage done by game under s. 11 (see Form of Notice, *supra*), or of any other claims under ss. 1, and 9 to 15.

Compensation for increased or diminished value of holding.

The above form may also be used for a claim by an outgoing tenant in respect of any increase in the value of the holding due to the adoption of a special standard or system of farming under s. 9; see Form of Notice, *supra*, and notes thereto.

Compensation for disturbance.

Also for a claim for disturbance under s. 12; see Form of Notice applicable thereto and notes thereto, *supra*.

Claims from mortgagees.

A tenant may claim compensation from a mortgagee on whom the tenancy is not binding and who, in consequence, takes possession of the holding: s. 15.

Contracting out prohibited.

Except where substituted compensation is allowed by the Act any agreement limiting the right of a tenant of an agricultural holding to compensation is void: s. 50.

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